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2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

4 01 COMMUNIQUE LABORATORY,)
INC.,)
5 Plaintiff,) Docket No. 1:10-cv-1007
6 v.) Alexandria, Virginia
7) March 18, 2013
LOGMEIN, INC.,) Volume I
8) (a.m. session)
Defendant.)

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11 TRANSCRIPT OF TRIAL
12 BEFORE THE HONORABLE CLAUDE M. HILTON
13 UNITED STATES DISTRICT JUDGE
14 AND A JURY

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by computer-aided transcription.

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FOR THE PLAINTIFF:

A. Cheung 53 -- -- --

1 P R O C E E D I N G S

2 MR. CORRADO: Good morning, Your Honor. Jack Corrado
3 for 01. With me today is Bill DeVinney, Marc Antonetti, Loura
4 Alaverdi, Neal Seth, and Kate McKnight. Tom Shunk will also be
5 here, be one of the presenters.

6 Thank you, Your Honor.

7 MR. MOLSTER: Good morning, Your Honor. Charles
8 Molster from Winston & Strawn on behalf of the defendant,
9 LogMeIn.

10 Also at counsel table is Wayne Stoner from WilmerHale
11 and Vinita Ferrera, also from WilmerHale.

12 MR. STONER: Good morning, Your Honor.

13 MR. MOLSTER: Thank you very much for coming out a
14 little bit earlier, Your Honor. We had a couple of matters that
15 relate to opening statement and the patent video that we wanted
16 to raise with the Court so -- in an effort to try to avoid
17 objections during opening statement.

18 THE COURT: All right.

19 MR. MOLSTER: First of all, we do have an agreement --
20 we haven't agreed to settle the case, Your Honor, apologize for
21 that -- but we do have an agreement to play the patent tape from
22 the Federal Judicial Conference for the jury, if it's agreeable
23 to the Court. I think it lasts about 18 minutes, and we think
24 it gives them some great background on what patents are, what
25 the PTO is. And -- and we have an agreement on that.

1 THE COURT: Is that necessary? People know what a
2 patent is. You-all are talking about patents. They know the
3 office is over here. People know what a patent is.

4 MR. MOLSTER: I think, Your Honor, respectfully, some
5 of these jurors are from -- not from Alexandria. Some of them
6 are from further counties. And I think that there are people
7 who -- and based on what -- the trials that we've done around
8 the country on both sides, the patent tape is very helpful
9 because some of these jurors aren't familiar with the patent
10 process.

11 THE COURT: Do you agree with that, Mr. Corrado?

12 MR. CORRADO: Yes, Your Honor. We don't object to it.
13 It -- I think it can be helpful in some matters, but I agree
14 with the Court that I think it's not necessary.

15 THE COURT: I'll let you do it, but I'm going to take
16 18 minutes off somewhere else because I think it's a waste of
17 time. If you-all agree to it, that's fine. Everybody knows
18 what a patent is. There's no problem understanding it,
19 particularly after you-all talk about it, and you'll just repeat
20 what's in that video. You'll be repeating opening statements
21 and about half the testimony of the witnesses, but I'll let you
22 play it.

23 MR. MOLSTER: Thank you, Your Honor.

24 The second issue relates to 01's opening statement. We
25 don't want to object during 01's statement. We don't know what

1 01 plans to say about this issue of the redesign, which was the
2 subject of some motions in limine that have been deferred to
3 trial, but we just want to remind that what 01 said to the Court
4 was that Mr. Shunk said that he would not argue that redesign
5 and evidence of infringement in opening statement. He said we
6 do argue that the switch they made to continue -- continues to
7 infringe. And so, obviously, we're going to have to tell the
8 jury that there is an old and new architecture and that we claim
9 they both infringe. So long as that's okay, maybe we don't have
10 a dispute here.

11 As long as that's all they do, is say that the
12 redesign, the second version, infringes, that's fine. But we
13 believe it's improper for them to argue that it shows -- it
14 demonstrates infringement under 407 or that it's evidence of
15 willfulness in the opening statement.

16 In their opposition to the motion in limine, they said
17 in accord with Federal Rule of Evidence 407, 01 does not intend
18 to argue that the redesign by LogMeIn of LogMeIn's products
19 shows that the original design infringed '479.

20 So if they -- if they stick to that in opening
21 statement, we're fine. We don't -- and that's why we've just
22 raised it, because we don't want to have to object during
23 opening statement.

24 MR. CORRADO: Your Honor, I think Mr. Shunk is going to
25 comply with what he presented to the Court. I don't expect that

1 there's going to be any reference in that way to the redesign in
2 opening statement that it shows evidence of infringement.

3 THE COURT: I'm sorry?

4 MR. CORRADO: I -- I am confident that Mr. Shunk will
5 comply with what he has told the Court, and that is --

6 THE COURT: So you don't disagree with what Mr. Molster
7 said? So we have no issue.

8 MR. CORRADO: Doesn't seem to be an issue, Your Honor.

9 MR. MOLSTER: All in favor of no issues, Your Honor.

10 Now, they -- with respect to our opening statement,
11 there are a number of objections to documents that we would like
12 to use in our opening statements -- in our opening statement.

13 If I may, Your Honor, I have a copy of the actual
14 exhibits. Some of the exhibits relate to -- some there are no
15 objections, some there are objections as to admissibility. If I
16 could hand this to Marshal Williams and have him pass it up to
17 the Court.

18 I think the -- there's two ways we can go on this.
19 Either we get rulings now as to admissibility to cure their
20 objections or we're allowed to play them in the opening
21 statement. And if we can't get them into evidence, that's our
22 problem at the end of the day. We'll do whatever the Court's
23 pleasure is. But these are exhibits that we think are highly
24 relevant, they are very relevant to issues in the case.

25 The whole point of the opening statement is a roadmap

1 to show what the evidence is going to show, and this is what the
2 evidence is going to show. It's the actual evidence.

3 THE COURT: You can tell them what the evidence will
4 show and not use exhibits. Why do you need to use any exhibits
5 in the opening statement?

6 MR. MOLSTER: Because we'd like -- Your Honor, we'd
7 like for the jury to be able to see exactly what these documents
8 are and what -- the opening statement includes a number of
9 admissions that 01 has made, which we think are highly relevant
10 to the case, and we --

11 THE COURT: I'm not going to permit you to do that.
12 All you'll be able to do is hold it up at the podium and tell
13 them what it says. So why even use it?

14 MR. MOLSTER: Well, we'd like to put them on the
15 screen, Your Honor, so the jury can see them.

16 THE COURT: I'm not going to permit that. I told you
17 we're not going to put all these documents up on the screen. I
18 told you you can use this equipment when there's diagrams that
19 are important. Only because it's a patent case are the screens
20 here and only because there may be something technical involved.

21 Now, the exhibits that are going to come in at trial
22 have nothing to do with technical information that you need to
23 tell the jury in opening statement.

24 MR. MOLSTER: There are several of our exhibits that
25 we'd like to show on the screen that are patents and diagrams

1 for the patents, and they don't -- and 01 does not object to us
2 using those. And we'd like to use --

3 THE COURT: If they're diagrams to the patents, you can
4 show those.

5 MR. MOLSTER: Very well, Your Honor. If we could have
6 a moment.

7 Also, we wanted to show our patent. There was an
8 objection to showing our patent to the jury, Your Honor. We
9 think that our patent was put in issue by one of their experts.
10 It was in our motion in limine. We think the fact that we have
11 patents is highly relevant. There's some *Georgia-Pacific*
12 factors so we think we should be able to show that as well.

13 THE COURT: You can show it. You can't make an
14 argument in the opening statement.

15 MR. MOLSTER: Very well, Your Honor.

16 THE COURT: I mean, if you're simply telling them this
17 is what we're going to show our patent to be --

18 MR. MOLSTER: Right.

19 THE COURT: -- that will be permissible.

20 MR. MOLSTER: Very well.

21 MR. CORRADO: Take a minute on this, if I may.

22 THE COURT: All right.

23 MR. CORRADO: We certainly agree with the ruling, Your
24 Honor, about publications involving some of this for the jury.
25 It's a great waste of time and it goes into -- not going to

1 argue that again, but it goes into issues that are subject to
2 the Court's deferral of the motions in limine and objections.

3 The patent, their patent, being displayed to the jury
4 is prone to create tremendous jury confusion. The concept that
5 a defendant has a patent which may cover -- or the defendant may
6 claim covers his own product is irrelevant to whether or not the
7 defendant is infringing the plaintiff's patent.

8 And once you do that, once you suggest to the jury,
9 hey, look we've got a patent ourselves, the jury is now -- and
10 there's great case law on this -- is confused about whether or
11 not, well, if you're practicing your own patent, that's a
12 defense to infringement of our patent.

13 And for that reason, we strongly object to the
14 display -- and, again, they can talk about it in opening, they
15 can advert to it. But to display something like that to the
16 jury in opening is at the get-go going to confuse the jury about
17 what patent we're talking about, what the claims are. The jury
18 simply, frankly, doesn't understand the relevance of a
19 defendant's patent.

20 Frankly, there is no relevance of the defendant's
21 patent, and so we would strongly object to the display of that.
22 Again, he can advert to it, he can talk about it, but -- but to
23 show it to the jury is going to create in the jury's mind a
24 great confusion about what's going on here.

25 THE COURT: I think if you are going to show any of

1 them, you can show both.

2 MR. CORRADO: I would remind the Court it is subject to
3 an outstanding motion in limine to exclude reference to their
4 patent. And that's sort of the general problem here, displaying
5 it in opening -- displaying to the jury at opening matters that
6 are subject to pending motions in limine. The Court deferred
7 these questions until -- right -- absolutely rightly there was a
8 context developed for knowing whether or not it was appropriate
9 for this evidence to go before the jury, deferred it until we
10 got that context in trial.

11 And so to allow this now is essentially an end run
12 around that motion in limine. It essentially resolves it
13 because the jury will be able to see it up on the screen. And,
14 again, for that reason, I think it's perfectly fine to talk
15 about it. We're not showing our patent in opening, by the way.
16 All we're showing in opening is diagrams of the -- of the
17 important figure in our patent and their architecture, just
18 two -- two boards.

19 So the use of -- I would suggest the display of the
20 patent in opening is a problem, will tend to confuse the jury
21 and it's subject to a pending motion in limine.

22 MR. MOLSTER: With respect to our patent, Your Honor,
23 absolutely relevant. It's a *Georgia-Pacific* factor. I think
24 that's, as you say, if it sells for the goose, it sells for the
25 gander.

1 THE COURT: I believe the ruling's correct. There can
2 be no argument about this. But if you have a patent, I believe
3 you can show that. If we're showing the other -- if we're
4 showing other diagrams of patents, we'll show it all or we'll
5 show none. I believe it will be correct.

6 MR. MOLSTER: Your Honor, we'd also like to be able to
7 show some of the important claim terms at -- straight out of the
8 patent.

9 Would that be agreeable so the jury can see what the
10 claim terms are?

11 THE COURT: That's going to be a waste of time in
12 opening statement.

13 MR. MOLSTER: We'd also like to show --

14 THE COURT: Maybe you ought to -- how long do you-all
15 intend --

16 MR. MOLSTER: 45 minutes.

17 THE COURT: Oh, my word. No. I'm just simply not
18 going to permit that now. You can get up in five minutes and
19 tell them what the issues are in this case and then put on your
20 evidence. I'm not going to allow a lawyer to stand up in
21 opening statement and try to tell every piece of evidence that's
22 going to come in. It's an absolute waste of time. I know you'd
23 like to tell -- everybody likes to tell these juries five, six,
24 seven different times the same thing over and over again.

25 Why don't I give you-all 15 minutes a side? If you

1 want to waste it with showing these diagrams, go ahead. But in
2 15 minutes you can summarize any case with any issues that could
3 ever come along, tell the jury what the issues are, and then
4 call your witnesses and put the evidence on, talk about the
5 claims with your witnesses.

6 MR. MOLSTER: Can I respectfully request 30?

7 THE COURT: 15 is more than enough.

8 MR. MOLSTER: Very well.

9 THE COURT: I can tell the jury what this case is about
10 in five minutes.

11 MR. MOLSTER: Understood, Your Honor.

12 THE COURT: Maybe even less. But I'm going to tell
13 them what it's about before you-all even start.

14 MR. MOLSTER: Understood.

15 THE COURT: All right.

16 MR. MOLSTER: Thank you. I wanted to -- there was a
17 ruling by Judge Jones on Friday with respect to a motion about
18 confidentiality information. He indicated that 01 could not
19 talk about our commercially, very highly critical competitive
20 information regarding product-by-product financial information.
21 I don't expect they're going to try to do it in the opening
22 statement, but I just wanted to give the Court a heads-up that
23 that was a ruling that occurred on Friday.

24 THE COURT: I saw his ruling. I'm sure they're not.

25 MR. MOLSTER: Thank you. Here's the last point. We

1 have tried to reach an agreement with 01 that we see trial
2 exhibits the night before -- sometime before they are handed to
3 a witness at trial.

4 01 is not agreeable to that. It's a process we used in
5 every other case. So what that means is that unless we do
6 something, the exhibit is going to be shown to the witness and
7 we're supposed to either object in front of the jury or, I
8 guess, have a sidebar with you. We don't think that's the most
9 efficient way to try the case. We think that's going to slow
10 the case down.

11 Therefore, we would urge that there be some process
12 where before the witness takes the stand, we have worked -- we
13 have identified what objections, if any, there are to those
14 exhibits and -- and have you rule on them, to the extent there
15 are any objections, before the witness takes the stand so it
16 doesn't slow down the trial.

17 THE COURT: Well, there's a requirement for the list of
18 exhibits to be filed, wasn't there?

19 MR. MOLSTER: But there's still objections. They
20 haven't been ruled on. And so we -- you know, we're just trying
21 to come up with a process so that that's done in an orderly
22 fashion, not in front of the jury and not at sidebars, so it
23 doesn't slow down the trial.

24 THE COURT: We haven't got that many objections,
25 surely. These jurors are used to objections. I tell them to

1 ignore those.

2 MR. MOLSTER: There are many objections right now.

3 THE COURT: That's no problem.

4 MR. MOLSTER: Very well.

5 THE COURT: We'll take care of that as we go along.

6 MR. CORRADO: One last thing, if we may. The ruling on
7 patents, there is a patent in this case that is irrelevant, the
8 Accolade patent, that I believe that -- that they intended to
9 show in opening. I understand that your ruling precludes them
10 from showing other people's patents in opening.

11 There is also an issue about whether or not they can
12 refer to inequitable conduct issues in opening. And we'd like
13 to just take a minute of the Court's time to talk about that
14 issue. It's a very important issue, as far as we're concerned,
15 about sort of infecting the jurors' minds with issues that there
16 has been a fraud on the PTO. And if I could ask my partner,
17 Marc Antonetti, just to address that briefly.

18 THE COURT: All right.

19 MR. ANTONETTI: Thank you, Your Honor.

20 With respect to the inequitable conduct issue, as you
21 know, that is an issue for the Court to decide and not for the
22 jury to decide. And we gathered from the many exhibits that
23 they intended to put on that they do intend to argue -- or at
24 least to, in their opening statement, bring out a number of
25 issues related to inequitable conduct. Those are not for the

1 jury to decide. And we had a motion in limine that addressed a
2 wide range of things, many of which they've suggested go to
3 inequitable conduct.

4 I would prefer not to have us object during their
5 opening on that point, but if they're going to raise issues
6 related to inequitable conduct that are solely for the Court to
7 decide, we would like that not to occur. I don't know what
8 they're going to do with their opening at this point in time,
9 but we did see throughout there were a number of issues on
10 inequitable conduct, and our motion in limine does cover many of
11 those items. I don't know what they'll address though. So we
12 would request that the Court preclude evidence related to
13 inequitable conduct during the opening statements.

14 MR. STONER: Your Honor, you've already decided this
15 issue. They filed a motion to bifurcate inequitable conduct out
16 of the case -- out of the jury trial. Your Honor denied it. So
17 it's part of this one trial, and so we need to address the issue
18 during this trial. We intend to do so.

19 THE COURT: Well, you wouldn't have to address it in
20 opening statement. I don't need to be -- I know that the issue
21 is there. You don't need to apprise me of it.

22 MR. STONER: Very good.

23 THE COURT: So if we can keep that out of opening
24 statement.

25 MR. ANTONETTI: Thank you, Your Honor.

1 THE COURT: I shouldn't mention it either as an issue
2 in the case.

3 MR. ANTONETTI: I'm sorry?

4 THE COURT: And I shouldn't mention that's an issue in
5 the case either.

6 MR. STONER: You know, we will examine the witnesses on
7 the issue, obviously, because it's part of this trial.

8 THE COURT: Right.

9 MR. ANTONETTI: Your Honor, in that regard, I would
10 suggest simply that that not occur unless it's done outside the
11 presence of the jury, whether it's on Friday or while they're
12 deliberating. One of their cases that they cited in resisting
13 our motion to bifurcate had a good solution to it. And that was
14 the *Inventio v. Otis Elevator* case in which the court there did
15 not bifurcate the case, but did have the evidence of inequitable
16 conduct heard outside the presence of the jury during different
17 opportunities to present itself during the case. So we would
18 suggest that that would be a good way to address that question.

19 THE COURT: Well, I don't know that that's necessary.
20 It just deals with the evidence of what was available, what
21 information was available at the time. I don't see how that
22 bothers the jury in making their determination that there's
23 infringement or not.

24 MR. ANTONETTI: Certain evidence that they may look to
25 introduce, for example, related to the Ontario Securities

1 Commission. And Mr. Cheung will be testifying later on this
2 morning. I anticipate they may want to ask him questions about
3 that. That would move in limine to preclude them asking because
4 it's not something that should be considered in the first
5 instance. The point it relates to, which they represented it
6 relates to, is the inequitable conduct issue.

7 So if that were to be raised, I think it will be highly
8 prejudicial to the jury. But if the Court wishes to defer
9 ruling on that, doing it --

10 THE COURT: What does the Canadian Securities
11 Commission have to do with inequitable conduct?

12 MR. ANTONETTI: Well, we would say it has nothing to do
13 with it, Your Honor.

14 THE COURT: What are they saying?

15 MR. ANTONETTI: Their -- their position would be that
16 it shows that either, A, Mr. Cheung is not truthful or, B, that
17 it's prior conduct being used to prove consistent behavior here
18 in the present time.

19 Those two issues relate only to inequitable conduct,
20 but is not a criminal conviction and it has no bearing on the
21 case. We would say it should not come in at all. But if the
22 Court were going to hear that evidence, we believe it should not
23 be done in the presence the jury.

24 THE COURT: What relevance would that have?

25 MR. STONER: Your Honor, Mr. Cheung was -- agreed

1 to that he violated the Canadian insider trading laws. I can
2 short-circuit this. We will not examine Mr. Cheung about that
3 subject, but we do intend to examine him about issues that
4 overlap with the validity issue in the case as well as the
5 inequitable conduct issue. It was prior art that invalidates,
6 he would tell, from the patent office, and that seems relevant.

7 THE COURT: Well, I don't think that hurts to come out
8 in front the jury.

9 MR. CORRADO: Your Honor, there are some issues to take
10 up before witnesses. For example, there are -- that the process
11 of reading these deposition designations, which will be the
12 second, I think, witness that we call today, we'll be reading
13 depositions. We can defer that at any point to -- but we would
14 like to have some quick ruling on that before we actually do
15 that reading because I think it will be confusing otherwise. We
16 can do it after the jury's empaneled or I can do it right now.

17 May I just address it, tell what the problem is?

18 THE COURT: All right.

19 MR. CORRADO: Your Honor, we have -- we've designated
20 certain -- as always we do, we designated certain portions of
21 the deposition exhibits of the defendant to be read into
22 evidence. And we have an absolute right to do that under
23 Rule 32. We can read in -- planning to read in the deposition
24 of the chief technical officer and the fellow who was the
25 architect of the infringing system. We have certain -- certain

1 deposition excerpts, which we plan to read into evidence. And
2 we have to right to do that, an absolute right to do that for
3 any purpose.

4 They have the right under Rule 106 to add in things
5 that would be -- that if left out would be unfair. Well, Your
6 Honor, here is our designations. Here is their designations.
7 And what they're doing is essentially using that as a green
8 light to get all of their affirmative -- a lot of their
9 affirmative evidence into the case in our case-in-chief, and it
10 creates a whole lot of confusion for the jury if the -- if --
11 and there are self-serving things. For example, the LogMeIn
12 lawyer's asking the LogMeIn witness in a deposition, is
13 everything you said truthful, and questions in the deposition
14 that go to issues that are completely unrelated to the
15 functionality, for example, of the 01 system and so on.

16 Forcing us to read their counter-designations in a --
17 forcing us to read not only our designations but their -- all of
18 their counter-designations would be essentially to put us in a
19 position of sponsoring testimony that we don't -- we shouldn't
20 sponsor.

21 So I would respectfully suggest that we should be
22 allowed to read our designations. If as we're reading it, they
23 say -- and for 32 years in this court, this is the way I've
24 always done it -- you're reading a deposition and they say, you
25 ought to read the sentence before that. Well, fine, we'll read

1 the sentence before it. Or you ought to read the question after
2 it, that's fine.

3 But to put in wholesale a whole package of their
4 affirmative evidence is just improper. So I would just suggest
5 that we should be allowed to read our evidence -- our
6 designations in. They can put theirs in. Their witness is
7 going to be here apparently. They can put theirs in when their
8 witness is here. Failing that, I would very strongly ask that
9 we don't have to read their questions.

10 THE COURT: Didn't I already indicate that when it goes
11 beyond the testimony of your witness, that they would have to
12 put it in in their case?

13 MR. CORRADO: Your Honor, I believe -- I believe you
14 did say that. And that's -- there's some question about what
15 exactly the ruling was. But -- but if that was the intent of
16 the Court, that is fine with us.

17 THE COURT: I'm sure there is. And there's some
18 question of how I'm even going to rule on this until I hear it
19 because I'm not going to go through all these depositions
20 beforehand and make rulings on them. What you ought to be able
21 to do is to read your designated portion of the deposition and
22 they ought to be able to put in or read behind you that part
23 that is relevant to what you put in. When they go beyond that,
24 then it ought to stop and it ought to come as their part of the
25 case.

1 MR. CORRADO: Absolutely --

2 THE COURT: But I can't do that until I hear it come
3 in, as far as I know. I don't know how to do it.

4 MR. CORRADO: Absolutely right. But the solution to
5 that whole problem is letting us read ours in first without
6 having to also read their counter. So with that ruling, I think
7 we're absolutely fine on this. We'll read ours in. After we're
8 done, they can ask -- they can have someone take the --

9 THE COURT: That's right. If they go beyond where you
10 ought to go, you can object to it.

11 MR. CORRADO: Exactly, Your Honor. Thank you, Your
12 Honor.

13 THE COURT: All right.

14 MS. FERRERA: Your Honor, may I address that issue
15 briefly?

16 THE COURT: Sure.

17 MS. FERRERA: Your Honor, as I understand what they're
18 suggesting, is that they would read all of their designations
19 for -- I apologize for my voice, Your Honor -- for this
20 particular witness and then we would come back in and fill in
21 the holes that we believe have been left. And that seems to be
22 very confusing to the jury to have -- hear once and then hear
23 our counter-designations out of context from the original
24 designations.

25 What we would propose -- and, frankly, Your Honor, we

1 proposed this to 01 over the weekend -- is that we try to --
2 before coming and presenting this testimony to Your Honor is to
3 go through and match up, you know, which designations they want
4 to present and which counter-designations we think are fairly
5 relevant and responsive to the testimony that they're
6 designating and just read it all at once so the jury gets an
7 understandable presentation of the testimony. And we think
8 that's what the Rule permits.

9 And, Your Honor, we're not trying to designate stuff
10 that's completely irrelevant to 01's designations.

11 THE COURT: You want him to read the entire -- read
12 your portion of the deposition as well as his?

13 MS. FERRERA: Your Honor, whether they read it or
14 whether we get up immediately after the section is read and then
15 we read the part that we think is relevant to put into context,
16 I leave that up to you, what you think would be more
17 appropriate. But I think they have to be read together, rather
18 than all 01's designations and then separately our
19 counter-designations.

20 THE COURT: All right. Well, I don't have any problem
21 with that. But at the point that this goes beyond the area that
22 you have designated, when you start getting a few sentences away
23 from what they had, then you've got some problems, it seems to
24 me.

25 MS. FERRERA: Well, your Honor, to be fair, their --

1 they may have asked one question about something, you know, how
2 does the LogMeIn product work and then two pages later ask the
3 follow-up question we think puts the other one in context. I
4 think that's --

5 THE COURT: No, you can't rearrange it like that.

6 MS. FERRERA: Thank you, Your Honor.

7 THE COURT: If he's reading a deposition and he stops
8 at the end of the sentence and there's a sentence afterwards
9 that you think is relevant, that should be read at the time,
10 that can be read, but you can't hop around and try to make an
11 argument out of the order in which these things are done in the
12 deposition. You're going to have to do them in order. And if
13 there's something you want to expand on that he reads, you may
14 get up and read that.

15 MR. CORRADO: Thank you, Your Honor.

16 THE COURT: Or ask him to read it and he may do it.
17 But when you start going a few pages further on regardless of
18 the subject matter, no.

19 MS. FERRERA: Thank you, Your Honor.

20 THE COURT: Is there anything else?

21 MR. CORRADO: That's all we have, Your Honor.

22 MR. MOLSTER: Thank you, Your Honor.

23 THE COURT: I've got a list of a lot of lawyers. I
24 don't know who all wants to be introduced. What do we have? We
25 have Mr. Seth Neal -- or I'm sorry -- Neal Seth. I'm sorry.

1 I've got it backwards.

2 MR. CORRADO: Mr. Seth will be our -- will be our
3 presenter at trial.

4 THE COURT: All right. And John Corrado and Katherine
5 McKnight. Who else? Marc --

6 MR. CORRADO: Mr. Antonetti.

7 THE COURT: Marc Antonetti.

8 MR. CORRADO: Mr. Shunk -- I don't know if he's here.
9 Tom Shunk will be the lead lawyer at trial. He's in the
10 hallway.

11 THE COURT: All right. And --

12 MR. CORRADO: Those are trial presenters. We also have
13 Loura Alaverdi, who is here.

14 MS. ALAVERDI: Good morning, Your Honor.

15 THE COURT: All right.

16 MR. CORRADO: And Bill DeVinney, who is here, but they
17 will not be presenting.

18 THE COURT: All right. So everybody but Christine
19 Moser?

20 MR. CORRADO: Christine Moser is also here. She will
21 not be presenting during trial.

22 THE COURT: Then I'm going to -- I'll just introduce
23 those people that are going to be active in the trial --

24 MR. CORRADO: Okay.

25 THE COURT: -- or be here at counsel table during the

1 trial.

2 MR. MOLSTER: Yes, sir. So for us that would be Wayne
3 Stoner, Vinita Ferrara, and myself. Just a small little ragtag
4 team, Your Honor.

5 THE COURT: The three of you?

6 MR. MOLSTER: Yes, sir.

7 THE COURT: All right. Who else is at table that I
8 might to -- I'll introduce them.

9 MR. MOLSTER: Rachel is also an attorney.

10 THE COURT: All right.

11 MR. MOLSTER: And we were -- also have our corporate
12 representative at the table.

13 THE COURT: All right. Well, I'll not -- I'll not
14 represent --

15 MR. CORRADO: Thank you, Your Honor.

16 THE COURT: -- introduce them.

17 All right. Is the jury --

18 Oh, okay. Well, we have to take a brief recess and get
19 the jury up here.

20 (Recess taken at 10:06 a.m.)

21 * * *

22 (Jury voir dire is conducted, and the opening statements
23 commence as follows at 10:45 a.m.)

24 * * *

25 THE COURT: There's a request for a rule on witnesses?

1 MR. MOLSTER: We don't have one, Your Honor.

2 MR. SHUNK: We don't ask for that, Your Honor.

3 THE COURT: All right.

4 All right. Members of the jury, now that you've been
5 sworn, I'll give you a few preliminary instructions which I hope
6 will guide you in your participation in this trial.

7 It's going to be your duty to find from the evidence
8 what the facts are. You and you alone are the judges of the
9 facts. You will then have to apply those facts to the law as
10 the Court will give it to you. You must follow that law whether
11 you agree with it or not.

12 Now, the evidence form which you'll find the facts will
13 consist of the testimony of witnesses, documents received into
14 the record as exhibits, any facts that the lawyers may stipulate
15 to, or any facts that the Court may instruct you to find.

16 Certain things are not evidence and must not be
17 considered by you. Statements, arguments, and questions by
18 lawyers are not evidence. Objections to questions are not
19 evidence.

20 The lawyers have an obligation to their clients to make
21 an objection when they believe that evidence is being offered
22 which is improper under the Rules of Evidence. You should not
23 be influenced by the objection or by the Court's ruling on it.
24 If the objection is sustained, ignore the question. If the
25 objection is overruled, treat the answer like any other.

1 If you're instructed that some item of evidence is
2 received for a limited purpose only, you must follow that
3 instruction. Testimony that has been excluded or that the Court
4 has told you to disregard is not evidence and must not be
5 considered.

6 And anything you've seen or heard outside the courtroom
7 is not evidence in this case. You're to decide this case solely
8 on the evidence presented here in the courtroom.

9 Now, just a few words as to your conduct as jurors. I
10 would instruct you that during the trial you're not to discuss
11 this case with anyone, nor permit anyone to discuss it with you.
12 Until you retire to the jury room at the end of the case to
13 deliberate on your verdict, you simply should not talk about the
14 case. Don't read or listen to anything touching the case in any
15 way. If anyone should try to talk to you about it, bring it to
16 the Court's attention promptly.

17 Don't try to do any research or investigation about the
18 case on your own. Finally, don't form any opinion until all of
19 the evidence is in. Keep an open mind until you begin your
20 deliberations at the end of the case.

21 I would prefer that you-all not take notes, but listen
22 to the evidence as it comes in and rely on your collective
23 recollection when you begin your deliberations.

24 The trial is going to begin. The lawyers will make an
25 opening statement. You will then hear the testimony of

1 witnesses. When all the evidence is in, the lawyers will make
2 their closing arguments, I will instruct you on the law, and
3 you'll retire to deliberate on your verdict.

4 Now, we'll take a recess in the middle of the morning
5 and the middle of the afternoon and try to recess for lunch
6 around 1 o'clock, and we'll probably go into the neighborhood of
7 5:00, 5:30 in the afternoon, depending on where we are with the
8 witness, although that's got to be 5:00 today because I've got
9 to go to the funeral home after that. So we'll go to 5:00 this
10 afternoon.

11 All right. Gentlemen.

12 MR. STONER: Your Honor, we were going to play the
13 video about the patent system, if you recall.

14 THE COURT: Is that part of your 15 minutes?

15 MR. STONER: No.

16 THE COURT: I think you'd better forego that. I think
17 you better do your 15 minutes.

18 MR. STONER: Very well, Your Honor.

19 THE COURT: All right.

20 MR. SHUNK: May it please the Court.

21 My name is Tom Shunk, and I represent a company called
22 01 Communique Laboratory, Inc. Now, that's a long name so I'm
23 just going to shorten it up to 01 from time to time.

24 The company gets its name from the 0s and a 1 -- and
25 the 1s that a -- that a computer uses to think. And that's

1 because the company was founded by and is managed by a computer
2 programmer named Andrew Cheung. That's Mr. Cheung sitting over
3 there in the back row.

4 In 1997, ladies and gentlemen, Andrew Cheung invented
5 some really useful technology that for the first time allowed
6 everyday people, not just people with a technology background,
7 but everyday people, to connect their business computer to a
8 remote computer, like a computer at home or a laptop that they
9 might have, and to do that inexpensively, securely, and easily.

10 The technology is today called remote access services,
11 remote access services, and tens of millions of people use that
12 technology.

13 Now, Andrew's company, 01, was the first company to
14 sell that kind of remote access technology. The company brought
15 out its remote access service called I'm InTouch, I'm InTouch,
16 in 2000. In the early days, I'm InTouch won some industry
17 awards because it was so useful and so novel.

18 01 was able to partner with a large Japanese company,
19 Hitachi, in order to bring the technology to Japan. The remote
20 access service invention that Andrew made was so useful and so
21 novel, ladies and gentlemen, that in 2005 the United States
22 government awarded Andrew a patent on that technology.

23 It's patent 6,928,479. I'm just going to call it the
24 '479 patent from now on.

25 In the early days, ladies and gentlemen, the future

1 looked bright for Andrew, for 01, and for the I'm InTouch
2 service. 01 and the I'm InTouch service had a real chance for
3 success.

4 We're here today, however, because the defendant in
5 this case, almost four years later, decided to bring out its own
6 remote access service technology using Andrew's invention.
7 Worse yet, they decided that they would just give Andrew's
8 invention away in order to try to get customers to buy other
9 products that the company was offering.

10 So, ladies and gentlemen, even though today tens of
11 millions of people use Andrew's invention, neither Andrew nor 01
12 has been able to see the benefit from that invention. 01 just
13 couldn't compete with a competitor who was using its technology
14 and giving it away for free. And that is how LogMeIn, the
15 defendant, denied 01 its chance for success.

16 What LogMeIn did, ladies and gentlemen, is called
17 patent infringement. And 01 is here to ask you to award it
18 reasonable damages for LogMeIn's patent infringement.

19 You'll hear that Andrew Cheung actually began designing
20 software code when he was a child. He went to school and he
21 majored in computer science. He actually started a company in
22 college, selling parts that were imported, and then later put
23 those parts together and made computers and sold those in the
24 Toronto area.

25 In 1992, after he left college he started his company,

1 01 Communique Laboratory, Inc., what I call 01. They brought
2 out their first product, 01/Fax that turned the computer into a
3 fax machine. They then brought out another product called
4 Communicate! with an exclamation point. Communicate! is a
5 software product that combines fax, e-mail, voice messaging,
6 text-to-speech conversion, and paging all in one computer. It
7 was a really successful product. It sold five million copies
8 and was distributed throughout the United States by Comp USA,
9 Office Depot, companies like that.

10 Fast forward now to 1997, five years into the company's
11 life. Andrew was presenting the Communicate! product at a show
12 in Germany, and he was approached by the Swedish cell phone
13 company, Ericsson, about the Communicate! product, talking about
14 doing some additional stuff with it. That got Andrew thinking,
15 ladies and gentlemen, about the problems that there might be for
16 one computer to remotely connect to another computer.

17 Now, that may seem, oh, that -- that should be easy to
18 do, right? That should be simple to do. But that's because
19 today, our cell phones probably are more powerful than the
20 desktop computers were back then. It's only because people like
21 Andrew have brought inventions into the market since the
22 nineties that we have the kind of Internet technology and world
23 that we do today, because back in 1997, if you wanted to connect
24 one computer to another easily and cheaply, you had to have some
25 real Internet technology know-how.

1 Andrew decided that he needed to bring out a product
2 that didn't require knowledge of a lot of special computer
3 technology to get it to work. It should just work out of the
4 box. And so, ladies and gentlemen, in September, or
5 thereabouts, of 1997, Andrew came up with the idea that later
6 became the '479 patent.

7 As he was thinking about these problems that there
8 might be, he realized that there were three fundamental problems
9 he had to deal with; firewalls, dynamic IP addresses, and
10 routers. Now, those may sound like meaningless terms to you
11 now, but we will bring experts in who will talk about dynamic IP
12 addresses, firewalls, and routers, and you'll understand that by
13 the time the case is through.

14 Those three main obstacles were what were making it
15 difficult for people to easily and inexpensively and securely
16 connect one computer to another. Andrew will explain that in
17 1997, he thought long and hard about those three problems.

18 And by the fall of '97, he came up with his solution,
19 the solution he calls a gateway server or a locator server. He
20 uses those words interchangeably. And the idea, ladies and
21 gentlemen, was to put a computer that was owned by Andrew's
22 company in the middle between, for example, a person's business
23 computer and the remote computer, say, a laptop that the
24 individual wanted to use to see what was on the business
25 computer.

1 So there would be a locator server or a gateway server
2 standing in between the two computers. That gateway server
3 would use information that it obtained from the business
4 computer about its then current location in order to create a
5 communication, like a big pipe between the business computer and
6 the home computer or the business computer and the laptop.

7 You'll hear the word ping, ladies and gentlemen,
8 P-I-N-G. And that's part of the invention. The idea that
9 Andrew had was to have the business computer, the one with the
10 information that the user wanted to get to while they were on
11 the road, send a repeated communication to the locator server.
12 It didn't say anything. It was just sort of, Hello, I'm here.
13 This is my current location.

14 But the locator server would use that information that
15 it obtained so that when the laptop computer wanted to make the
16 connection, the locator server could do the connecting, make the
17 connection, set up the communication session.

18 Well, that was the invention. And it also allowed
19 Andrew's company to market the remote access service in a new
20 way. Rather than selling shrink-wrapped software that you would
21 have to put on your computer and then configure, Andrew decided
22 to market instead a service. So you didn't pay for the
23 software. You simply paid in order to get access to that
24 locator server that stood in the middle between the laptop and
25 the business computer.

1 Today, ladies and gentlemen, 01's main competitors,
2 LogMeIn and another company called Citrix, that you'll hear
3 about as we do this case, use Andrew's technology and they also
4 use Andrew's business model, because people really liked the
5 idea of using a service rather than paying for the software.

6 After he got the prototype working, Andrew turned the
7 technology over to his coworkers, Pedro Nascimento and Steven
8 Meyer, to start refining the details. After filing for their
9 patent, 01 demonstrated the product at major conventions in
10 Toronto and in Las Vegas.

11 But the timing here is important. First 01 brought out
12 its service in 2000. Then the company called Expertcity, and
13 later called Citrix, brought out its remote access service
14 called GoToMyPC, which imitated the I'm InTouch service in 2001.
15 And then several years after that, LogMeIn brought out its
16 service that imitated both. The timing is clear. In 2000, when
17 I'm InTouch was brought out, no other business was offering a
18 remote access service to the public like Andrew's. No one.

19 That brings us to the defendant, LogMeIn. LogMeIn was
20 begun as a company by a Hungarian software designer named
21 Marton Anka. In 1998, a year after Andrew had already come up
22 with his idea, Mr. Anka developed a product called Remotely
23 Anywhere that was also supposed to do remote connections, but --
24 and this is a big exception -- Remotely Anywhere, number one,
25 did not use a locator server; two, it was not a remote access

1 service like I'm InTouch; three, it wasn't easy for people to
2 understand and use. And, as a result of those three things, it
3 did not solve the three problems; firewalls, dynamic IP
4 addresses, and routers that I mentioned earlier.

5 You needed to pretty much be an IT professional in
6 order to make Remotely Anywhere handle any of those
7 difficulties. Andrew's invention, of course, made it possible
8 for everyday people to use remote access services.

9 How are we going to prove that LogMeIn's service uses
10 Andrew Cheung's invention? Well, it's not the case, and we
11 don't claim and we're not going to prove to you that Mr. Anka
12 copied word by word the software code from 01. We're not going
13 to argue that. We don't have to. The fact is that Andrew's
14 patent doesn't have examples of computer code in it. It teaches
15 the invention in simple English. And so once you hear about or
16 see the invention, if you're a software programmer, you can
17 write the code. So, instead, what we've done is we've obtained
18 technical manuals from LogMeIn. We've obtained their computer
19 source code, of course, as well. And we've actually done
20 experimentation to see how exactly the LogMeIn service works.

21 We're going to bring in a technical expert named
22 Dr. Andrew Grimshaw. He's a computer professor at the
23 University of Virginia. He's studied these technical manuals
24 and source codes very thoroughly, and he'll explain to you he is
25 convinced that the LogMeIn software infringes claim 24 of the

1 '479 patent.

2 Now, when I say claim 24, what do I mean? You'll see
3 that when -- when you have an opportunity to look at the patent
4 when you deliberate and you have the documents with you. The
5 claims are the numbered paragraphs at the end of the patent. We
6 need prove that the LogMeIn device or the LogMeIn service
7 infringes only one of those claims in order to show that there
8 is patent infringement in this case. And Dr. Grimshaw is going
9 to take claim 24 and walk through it word by word and show you
10 why every word of that claim can be found in the LogMeIn
11 service. In order to keep the case streamlined, we're only
12 going to talk with you in this case about claim 24.

13 Now, you'll hear from the LogMeIn witnesses that they
14 have been successful with their product and 01 has not, 01 is a
15 failure. Well, of course, 01 is a failure, ladies and
16 gentlemen, in their minds because they stole 01's invention and
17 gave it away for free. But they have a fancy name for this.
18 They call it their freemium model, freemium with an f.

19 In a nutshell, ladies and gentlemen, the freemium
20 model, you'll hear, is to give Andrew's technology away for
21 free, technology that his company spent \$25 million to develop
22 and commercialize. They give it away for free in order to get
23 customers to upgrade to a premium version of their product; and
24 then, secondly, to develop a large base of users to encourage
25 investors to put cash in their company and drive the stock price

1 up; and, three -- and this is the most insidious of the three --
2 use the free giveaway as a way to put all their competitors out
3 of business.

4 This ruthless approach seems to have worked. When
5 users found out they could get Andrew's invention for free, they
6 flocked in droves to the LogMeIn product. And LogMeIn has
7 expanded their product line to include services like IT Reach,
8 LogMeIn Pro, Ignition, Join.me Free and Join.me Pro. And all of
9 these names, all of these products you will hear still use
10 Andrew's invention, and they all infringe.

11 The evidence is going to be that the free giveaway gave
12 LogMeIn 15 million users, and it's given LogMeIn a market value
13 of \$500 million and more than \$200 million of cash on hand.
14 LogMeIn witnesses will say that the freemium model was a big
15 risk and so they should be entitled to a big reward for the
16 risk. But LogMeIn was not taking a risk with its -- with its
17 own technology. It was taking a risk with Andrew's technology.

18 So when LogMeIn decided to roll the dice by giving away
19 LogMeIn for free to see what it would get them, keep in mind
20 that they were rolling the dice with Andrew's money.

21 One thing is going to be clear from the evidence and
22 testimony, ladies and gentlemen. LogMeIn's money and their
23 value is all due to Andrew's invention. LogMeIn's own documents
24 show that the free service drives the success of all of their
25 other products, and the free service wouldn't work if it didn't

1 have Andrew's invention.

2 Now, you might ask yourself, if this invention happened
3 in 1997, why are we here today? And the answer is very simple.
4 First of all, it took the patent office, which spends a lot of
5 time reviewing, analyzing, and finalizing its decisions, five
6 years to prove of Andrew's patent.

7 So Andrew didn't have a patent to enforce until 2005.
8 Shortly after 2005, Andrew's small company looked around at the
9 various imitators of his product and he chose the one that was
10 at that time the biggest, Citrix, and he sued them in Ohio.

11 As soon as Andrew sued Citrix, Citrix went back to the
12 United States Patent Office and asked them to look again at
13 Andrew's patent in what's called a reexamination proceeding.

14 That reexamination proceeding took until 2010 to
15 finalize at the level of the patent office. Andrew's patent was
16 found to be valid by the United States Patent Office. Citrix
17 has filed an appeal, but today the '479 patent stands as valid
18 as it was on the day that it issued.

19 However, the combination of a lengthy time prosecuting
20 the patent, the time spent fighting Citrix, the time spent at
21 the reexamination before the patent office meant that 01 was not
22 in a position to bring this suit until the year 2010.

23 Now, ladies and gentlemen, the laws of this country
24 require that if someone infringes a patent, they must pay at
25 least a reasonable royalty for that infringement. And so we're

1 going to bring in an expert named Robert Brlas. He's an
2 accountant. He specializes in valuing patents. He's done a lot
3 of analysis of the financial records in this case, and he's
4 going to explain to you that he has placed a value on all of the
5 uses of the LogMeIn products that embody Andrew's invention.

6 Even the ones that are free, of course, are still
7 infringements and a value has to be placed on them. Even
8 LogMeIn places a great deal of value on its free products.
9 You'll hear testimony that they think their -- their free users,
10 even though the user is free, is actually worth 5 or \$6 a user
11 to them. And when you multiply that by the millions of users,
12 you can see that that's a lot of value.

13 Mr. Brlas will tell you from his research that a
14 reasonable royalty in this case is \$110 million. And, ladies
15 and gentlemen, when we get done presenting the evidence, the
16 expert testimony to you in this case, that is the number that we
17 are going to ask you to return in favor of -- in favor of 01,
18 \$110,000,000, because for a groundbreaking, market-creating
19 service, like the one that Andrew created, that is indeed a fair
20 and reasonable royalty.

21 If LogMeIn had wanted to gamble on -- with its -- on
22 its freemium business model with its own product, Remotely
23 Anywhere, that's one thing. They gambled with Andrew's money.
24 And so it shouldn't matter whether that gamble worked out or
25 not. They should pay for the infringement.

1 Now, of course --

2 THE COURT: Counsel, it's time to finish up.

3 MR. SHUNK: I will, Your Honor.

4 Defendants, they all have a story. They say they don't
5 infringe. And if they do infringe, maybe the patent is invalid.
6 And maybe if the patent isn't invalid, well, maybe there's some
7 other defenses. LogMeIn is no different, and I will let their
8 lawyers tell you about those defenses. But let me say just two
9 things about it.

10 First, when they argue -- their argument about
11 infringement has to do with the fact that they have -- they cut
12 the software up into little pieces and spread it out all over a
13 lot of computers around the world. You'll see, however, ladies
14 and gentlemen, that Andrew expected that people would try to do
15 that and his patent explicitly covers what they do.

16 When they talk about invalidity, they'll show you lots
17 of old patents claiming that somebody else invented Andrew's
18 invention. But each time you see one of those patents, ladies
19 and gentlemen, just ask yourself, does it solve those three
20 problems that Andrew solved; firewalls, dynamic IP addresses,
21 and routers. And the answer is going to be no. Andrew's patent
22 is valid.

23 My time is up, as His Honor has pointed out to me. I
24 look forward to the opportunity of introducing you to Andrew
25 Cheung, Robert Brlas, Andrew Grimshaw, all of the other

1 witnesses that you're going to hear, and proving to you that
2 LogMeIn's remote access and collaborative work services products
3 infringe claim 24 of the '479 patent. After the evidence is
4 done, I get an opportunity to speak to you again, and I will
5 tell -- I will explain to you in detail at that time how we have
6 answered every challenge that has been brought against this
7 case.

8 I thank you very much for giving me your full attention
9 and -- and your willingness to serve on this jury.

10 And, Your Honor, if I may, I want to incorporate by
11 reference the complaint in this matter for the record into my
12 opening statement. Thank you very much, Your Honor.

13 MR. STONER: May I proceed, Your Honor?

14 THE COURT: Yes, Your Honor.

15 MR. STONER: Thank you.

16 Good morning, members of the jury. Thank you for
17 hearing our case today. We know that it is a burden for you to
18 sit here and listen to this, and we appreciate your time and
19 attention.

20 Again, my name is Wayne Stoner, and along with my
21 colleagues, Vinita Ferrera and Charles Molster, we represent the
22 company that's being sued, LogMeIn. It's the defendant in this
23 case. LogMeIn is a software company based out of Woburn,
24 Massachusetts, an old industrial town outside of Boston that has
25 facilities all over the world and all over this country,

1 including near here in Ashburn.

2 LogMeIn is, as you heard, a software company. What you
3 did not hear was LogMeIn is a software company that employs over
4 550 people. It provides a service that 45 million people use to
5 access their computers around the world. It's a software
6 company that spent over \$100 million of its own in ten years
7 independently developing its technology without copying anyone,
8 without infringing anyone's patents, and it has a patent -- it
9 has patents of its own. And if I could, I would like to put one
10 of those on the screen so you can see it. This is Defendant's
11 Exhibit 170 -- 274. This is a patent issued to LogMeIn on its
12 technology. It was issued to Mr. Anka, who is one of the
13 inventors of LogMeIn's technology. You will hear more about
14 that in this trial.

15 One other thing you didn't hear from Mr. Shunk is that
16 LogMeIn introduced its product, grew as a company for six years,
17 and 01 Communique knew all about that. But for five years,
18 six years, they didn't say a word. They didn't sue. They
19 didn't send a letter to us saying we have a patent. We think
20 you're infringing. They didn't call up LogMeIn and say, you
21 know, we have a patent that you should be concerned about. No
22 lawsuit, no letter, no phone call, no e-mail, nothing for six
23 years. You would think if someone was being ruthless and
24 stealing your technology, you would have done something. They
25 did nothing.

1 As you were listening to Mr. Shunk, I expect you were
2 wondering, what is the other side of the story? If everything
3 is as he says it is, why are we even here? This is my chance to
4 tell you the other side of the story, what the evidence you will
5 hear and see in this case will be. You see, trial is like a
6 puzzle. Each witness you hear, each document you see is a piece
7 of that puzzle. And it's not until the end of the trial, as His
8 Honor said, that all of the pieces will be in place and you will
9 see the complete story and the true story. I break this case
10 down into four chapters like a book, and I want to talk about
11 each one of those briefly. It's only an overview and everything
12 I tell you will be shown to you as evidence in this trial.

13 The first chapter is a story of people, some of whom
14 are not in this courtroom but who invented things long ago.
15 Listening to Mr. Shunk, you might have thought that 01
16 Communique invented remote access or invented remote access
17 using a computer with a dynamic IP address or accessing a
18 computer across a so-called firewall. None of that is true.
19 Even their own expert witnesses admit that's not true.

20 And I'll show you one example of invention made before
21 01 that covers exactly what they did. And this is the Crichton
22 patent. I'll put it on the screen, Defendant's Exhibit 28.
23 This is a patent that issued to Mr. Crichton of IBM. He filed
24 the patent in 1997. And if we could look at the diagram of his
25 system, which is Fig. 10 of the patent, you can see he has two

1 computers. He's providing remote access from one computer to
2 another. He's doing so using the Internet and a server in the
3 middle, and he's doing it across a firewall.

4 You see, you cannot patent what other people have
5 already invented. And, if you do, your patent is invalid. So
6 that's the first chapter. 01 Communique did not invent remote
7 access or remote access to cross a firewall or remote access to
8 a computer using a dynamic IP address. Other people had already
9 invented that. So what did 01 Communique do? 01 is a Canadian
10 company that did put out a remote access product called I'm
11 InTouch that you heard about. It did not do very well. 01
12 filed for a patent on it anyway, but it didn't work well and
13 people didn't buy it and it wasn't popular. And this was years
14 before LogMeIn was even in the market.

15 They put out their product in 2001. We didn't come on
16 the market until 2004. And even by then, their product failed,
17 basically. People didn't like it. They didn't buy it. And
18 it's not just my saying so. You will see this, that they
19 describe to the public, to their own shareholders, securities
20 filings required under the Canadian laws. This is what they
21 say. They were not effective in gaining market share because of
22 the all new merits, or lack thereof, of their product.
23 01 Communique lost money every year since they introduced their
24 patented product. It has nothing to do with LogMeIn. It has to
25 do with the fact that their product -- people don't like it.

1 They don't buy it.

2 01 Communique realized this, and there's a reason why
3 it didn't work well. In today's world, to have a remote access
4 service that can service millions of people, you can't just have
5 a locator server the way Mr. Cheung invented. You need to have
6 a very sophisticated multiple-server platform with multiple
7 computers and multiple kinds of software performing different
8 functions in different languages that can scale up to allow this
9 to happen. That's the way LogMeIn's system works.

10 01 Communique's system, patented system, would not work that
11 way. And we know this not just because of my say-so or some
12 expert witness, but a few years after 01 filed its patent, it
13 was asking for some money from the Canadian government to work
14 on their products more, and they said we have a problem with
15 multiple servers. We're not even sure our system will function
16 that way. You will see that in this trial.

17 And the consequence of this is 01 Communique lost out
18 to other people, eventually LogMeIn too. You will see in this
19 case people reported to -- to 01 that we're losing -- we're
20 losing customers. Someone went to LogMeIn. It's faster,
21 easier, better to use. So that's chapter 2. 01 had a remote
22 access product, didn't work very well, people didn't buy it,
23 which brings us to chapter 3, LogMeIn.

24 LogMeIn also wanted to develop a remote access system.
25 Its founders, one of whom is in the courtroom today -- and I'll

1 introduce him -- Michael Simon. He's a software engineer. He's
2 one of the founders. He's the president today of this company
3 that grew from nothing. Started in the department with his --
4 with his partner, Marton Anka, whom you'll also hear testimony,
5 grew from a company in an apartment, today having 550 employees,
6 over \$100 million in revenue, provided a service that people
7 have used over two billion times.

8 This wasn't done by copying anyone. Mr. Simon and
9 Mr. Anka had worked on remote access systems in the 1990s, long
10 before Mr. Cheung, and they developed a product that has been
11 very successful. I saw during the voir dire that the Judge
12 asked some questions. You know, a number of you have used other
13 companies' products, Citrix products, other companies' remote
14 access products. But LogMeIn has come in. They've come in and
15 in ten years they've become the second biggest player, and it's
16 because their technology works well.

17 Here is a diagram, Defendant's Exhibit 1 on the screen,
18 of the LogMeIn system. This is very high level. You will hear
19 a lot more explanation in the trial about this. LogMeIn has
20 three different kinds of servers with different software
21 performing different functions in different places. There are
22 gateway servers, there are database servers, there are web
23 servers. And, as you see, a number of these are in Ashburn.

24 These all work together to provide a service that a lot
25 of people use. And, in fact, it works so well, LogMeIn could

1 afford to give away the basic service for free. This was --
2 this is a business model. A lot of companies do it today in the
3 computer business, as I'm sure you know. But LogMeIn said, you
4 know, the only way we're going to get people to see how good our
5 technology is is give it to them for free. And they'll see it
6 and hopefully they'll come back and they'll buy our premium
7 products. And that's what they did.

8 Now, 45 million people have now signed up to use
9 LogMeIn, all kinds of people; individuals, businesses, military,
10 government agencies, teachers. It has grown from nothing into a
11 successful company. Does it infringe 01's patent? No, it
12 doesn't. And there's three kinds of evidence you will hear in
13 this trial showing why and how we do not infringe. One is
14 technical differences. I'll show it to you later, but 01
15 Communique's claim 24, it's a long list of technical
16 requirements. Every single one of those needs to be in our
17 system to be there for their -- the infringement. Even if one
18 is missing, there's no infringement.

19 We're missing many of them. And I'll -- you'll hear
20 that in detail. You'll hear it from LogMeIn's engineers.
21 You'll also hear it from a professor of software engineering, an
22 independent expert witness at the University of Maryland,
23 Dr. Samrat Bhattacharjee, who has looked at the system and
24 concluded that there's no infringement.

25 You see, 01 Communique, because it did not invent

1 remote access, told the patent office that its system had very
2 specific narrow requirements for how it could work. They had to
3 have a special location facility requirement that performs
4 multiple functions. We don't do it. You will see those
5 representations that they made to the patent office before this
6 lawsuit started, before they started this lawsuit. And you'll
7 see how we don't do it that way. That's the first kind of
8 evidence you will hear.

9 But the second reason -- second body of evidence you
10 will hear of why LogMeIn does not infringe is 01 Communique's
11 own actions. As I said, LogMeIn came into the market in 2004.
12 2004. 01 Communique saw us right away. They saw us as a
13 potential competitor. They even said internally we want to get
14 rid of LogMeIn. We don't like this competition. Next month
15 their patent comes out and they think maybe LogMeIn infringes.
16 So let's look at it. So they downloaded our product off the
17 Internet. They had their patent, they had our product. They
18 asked the lawyers to consider --

19 MR. SHUNK: Objection, Your Honor.

20 THE COURT: Objection overruled.

21 MR. STONER: They considered whether we infringed. And
22 then what did they do? Nothing for five years. Five years
23 after the patent issued they didn't say they had any problem
24 with us at all. And there's a reason for that. They knew we
25 didn't infringe. See, 01 Communique is a publicly traded

1 company. Its officers, such as Mr. Cheung, have a duty to their
2 company to protect it from any unfair competition, if there is
3 any, and he wanted to get rid of LogMeIn. LogMeIn was a
4 competitor, going to take business away from them. That's
5 competition.

6 But if there's unfair competition, he had a duty to do
7 something about it, and he didn't. In fact, he testified he
8 didn't even consider LogMeIn, after suing LogMeIn, after doing
9 his investigation, whether we infringed. Didn't even consider
10 it. And today he's testified he doesn't even know whether we
11 infringe or not. He's an inventor. He's a software engineer.
12 He's been looking at our product for nine years. He doesn't
13 know whether we infringe or not. So that's the second body of
14 evidence you will hear.

15 The third one is LogMeIn's actions. See, LogMeIn
16 didn't want to use 01's technology. It doesn't work very well.
17 They didn't want to copy it, and you will see proof of that.
18 There was no copying, as Mr. Shunk said. In fact, after our
19 product was on the market -- LogMeIn introduced this product
20 without even knowing about 01. 01 is a small company. Didn't
21 even know about it. Introduced its product in -- with
22 independent research and development. And then after LogMeIn
23 introduced its own product, it learned about 01. It said, well,
24 here's a competitor. We ought to see what they're doing.

25 So Mr. Anka, the software engineer, downloaded their

1 product, looked at it long before this lawsuit started, before
2 he had ever heard from 01. What did he conclude? He says it
3 doesn't work well. It works very poorly, presents badly. He
4 thought this must be stolen anyway. That was his conclusion at
5 the time. So that's chapter 3. LogMeIn independently developed
6 its own product that does not infringe, which brings us to the
7 final chapter. Why are we here?

8 The simple explanation is 01 Communique changed its
9 business strategy. They went from a company trying to make and
10 sell a product that people would like to buy, which they failed
11 to do. Instead, they decided to sue people. 01 Communique
12 filed this lawsuit. They put out a press release to the world
13 announcing why they were doing it. And they said, quoting
14 Mr. Cheung, we want to participate in the growth and success of
15 the remote access market by leveraging our patent. So instead
16 of trying to sell a product that people like and want to use,
17 they want to sue people who have been successful. That's their
18 business model, suing people.

19 And, in fact, Mr. Cheung testified under oath in one of
20 the proceedings in this case in his lawsuit against Citrix, he
21 was asked, did you ever consider suing anyone else besides
22 Citrix, you know, even after looking at LogMeIn, he said
23 nothing -- he said nothing about LogMeIn -- no. But then he
24 states, well, did you even think about it? And he said, yeah,
25 you dream about suing everybody in the world. That was his

1 testimony. That is what he said. He dreams about suing
2 everybody in the world. That's why we're here.

3 So now they come in here asking you to take
4 \$110 million from LogMeIn and give it to them. They couldn't
5 earn it in the marketplace. They couldn't earn it by selling
6 products. They never made any money themselves using the
7 patented technology, but now they want you to take \$110 million
8 from LogMeIn. That's more than six times the profits LogMeIn
9 has made for its entire company, for its entire history, and
10 give it all to them.

11 So 01 could not earn in the marketplace the products
12 and technology that people want, and now they want to get it in
13 corporate by suing people. No one ever paid a dime to 01 for a
14 right to use this technology outside of a lawsuit, and they
15 shouldn't get any now.

16 At the end of this trial, I'm going to ask you to
17 find -- and I believe you will find -- LogMeIn does not infringe
18 the '479 patent. This technology is different. I'll also ask
19 you to find that the 01 patent is invalid. A patent is what
20 other people invented. They patented things that they didn't
21 know how to make work. So this patent shouldn't even exist to
22 allow 01 to go sue people on it.

23 I'll ask you to find that 01 Communique laid in wait
24 six years watching LogMeIn grow, knowing we didn't infringe,
25 just waiting until we get successful so they can sue us and try

1 to shake us down for money. I'll ask you to find that 01
2 Communique is not entitled to take any money from this lawsuit.
3 You will send the parties back to the marketplace to compete
4 there and not in this courtroom. Thank you.

5 THE COURT: All right. Why don't we take a brief
6 recess.

7 (Recess taken at 11:29 a.m.)

8 * * *

9 NOTE: The second half of the morning portion of the
10 case on March 18, 2013 begins in the presence of the jury as
11 follows:

12 JURY IN

13 THE COURT: All right.

14 MR. SHUNK: Your Honor, as our first witness, the
15 plaintiff calls Andrew Cheung, the president of 01 Communique.

16 NOTE: The witness is sworn.

17 MR. SHUNK: Your Honor, for the convenience of the
18 Court and the efficiency of it, we have prepared a binder of
19 only the exhibits that this witness will look at.

20 I wonder if it would be okay if we would give one to
21 Mr. Cheung, one to the Court, and one to opposing counsel, if
22 they wish one.

23 THE COURT: All right.

24 MR. SHUNK: Thank you. I would ask the Marshal to hand
25 them up.

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1 ANDREW CHEUNG, called by counsel for the Plaintiff,
2 first being duly sworn, testifies and states:

3 DIRECT EXAMINATION

4 BY MR. SHUNK:

5 Q. Tell the jury your full name, Mr. Cheung.

6 A. My name is Andrew Cheung.

7 Q. What's your job?

8 A. My job is the CEO and president of 01 Communique Laboratory,
9 Incorporated.

10 Q. Is that the plaintiff in this case?

11 A. Yes.

12 Q. Where is 01 located?

13 A. 01 has its headquarters in Toronto, Canada, and we also have
14 a branch office in Arlington, Virginia.

15 Q. What does 01 do?

16 A. 01 operate a remote access service called I'm InTouch and
17 some other related services.

18 Q. When did 01 begin as a company?

19 A. 01 was founded in 1992.

20 Q. Who began the company?

21 A. I did.

22 Q. Now, 01 Communique Laboratory, where did that name come
23 from?

24 A. Actually 0 and 1 was coming from the computer language, like
25 computer, they communicate, they think in 0 and 1. That's the

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1 digital communication, basically.

2 Q. Mr. Cheung, you have a binder of exhibits in front of you.

3 Would you turn to Plaintiff's Exhibit 1 to begin with.

4 Do you recognize Plaintiff's Exhibit 1?

5 A. Yes, I do.

6 Q. What is it?

7 A. This is the copy of the '479 patent.

8 Q. Are you one of the inventors that is named?

9 A. I am.

10 MR. SHUNK: Your Honor, Plaintiff moves the admission
11 of Plaintiff's Exhibit 1.

12 MR. STONER: No objection.

13 THE COURT: It is admitted.

14 BY MR. SHUNK: (Continuing)

15 Q. Mr. Cheung, is it okay if we call this the '479 patent
16 between the two of us?

17 A. No problem.

18 Q. Would you read off the full number for the jury so that they
19 have got that on the record.

20 A. The patent number is 6,928,479.

21 Q. What company or person today owns the '479 patent?

22 A. My company, 01 Communique Laboratory, Inc., owns that
23 patent.

24 Q. How did you come to own the patent?

25 A. Me, in addition to another two inventors, Pedro Nascimento

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1 and Steven Meyer, assigned the owners to the company in the year
2 2000, when we filed the patent.

3 Q. You mentioned two other inventors. Let me ask you about
4 them individually.

5 Who is Pedro Nascimento?

6 A. Pedro Nascimento is our VP of product development.

7 Q. What about Steven Meyer?

8 A. Steven Meyer was our chief technology officer.

9 Q. Does Steven Meyer work for the company anymore?

10 A. No, not today. He was no longer working for 01 since 2002.

11 Q. What about Pedro Nascimento, is he still with your company?

12 A. Yes, Pedro is still with 01 today.

13 Q. Do you know where Pedro lives?

14 A. Pedro lives in Toronto, Canada.

15 Q. Let's take just a second to learn a little bit more about
16 01, the company.

17 Where is its headquarters?

18 A. 01's headquarters in Toronto, Canada. To be precise, it is
19 a suburb of Toronto called Mississauga.

20 Q. Does 01 have offices anywhere else?

21 A. We have a branch office here in Arlington, Virginia.

22 Q. Do you have any employees that work at that branch office?

23 A. Yes.

24 Q. Who?

25 A. We have a lady called Ginger Jones work in that office.

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1 Q. Anyone else?

2 A. Not at this point.

3 Q. Mr. Cheung, let's now learn a little bit about you and your
4 background.

5 Where do you live?

6 A. I split my time about 50/50 between Toronto, Canada, my
7 home, and an apartment here in Arlington, Virginia.

8 Q. Did you go to college?

9 A. Yes, I went to college. I graduated 1987 at the University
10 of West Ontario with a honor degree in computer science. And
11 honor degree in Canada at that time is kind of like a Pre-Master
12 degree that you only need to spend one year to pursue your
13 Master degree.

14 Q. Maybe I should have started a little earlier. Where were
15 you born, Mr. Cheung?

16 A. I born in Hong Kong.

17 Q. When did you come to Canada?

18 A. When I was 17.

19 Q. And are you a Canadian citizen now?

20 A. I am a Canadian citizen.

21 Q. Now, in that span of time that you have been alive, when was
22 it that you began working with computers?

23 A. Oh, that was a long time. I actually started working
24 computer when I was a kid. Since computer came out, I always
25 ask my dad can I have one. And when I got my first computer,

1 the Apple II, as you can tell is a long time, I started teaching
2 myself in programming from that time.

3 Q. What kind of programs did you write, just generally?

4 A. Yeah, at that time those programs would be obviously not as
5 sophisticated as the software today. It would be something
6 like -- I remember I did a very rudimentary game like people
7 playing ping-pong with each other.

8 And I also had written a -- kind of an inventory software,
9 keeping track of my music collection. Like you can, you can
10 search music against type, album, the artist, and things like
11 that, and it would return -- now tape number and album number
12 and the track number, those things.

13 Q. Well, when did you start running a business that was related
14 to computers?

15 A. That was when I was still in college in London, Ontario, at
16 the university. I started a company buying and selling computer
17 parts to local computer stores in London, Ontario, which is
18 where I went to college. And then later on, after I graduated,
19 I moved the company out to Toronto and continued expanding into
20 manufacturing computer as a whole and then resell them across
21 Canada.

22 Q. Whatever happened to that company?

23 A. I sold the company in 1992.

24 Q. 1992. What did you do at that point after you had sold your
25 first company?

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1 A. After I sold the company, I started 01 Communique.

2 Q. What was the initial business of 01 Communique?

3 A. The initial business of 01 Communique was a product called
4 01/Fax, which turned your computer into a fax machine to receive
5 fax and send fax so you don't need to buy a fax machine.

6 Remember, at that time, fax machine cost like 1,000 to 2,000
7 apiece.

8 Q. Well, let's take a look at Plaintiff's Exhibit 4.

9 And I would ask, Your Honor, to mark the -- Marshal to
10 provide that to Mr. Cheung. It is a physical exhibit.

11 Mr. Cheung might be able to pick it out of the box faster.

12 A. Yes.

13 Q. Would you hold that up so the jury can see it, Mr. Cheung?

14 What is Plaintiff's Exhibit 4?

15 A. This is the actual box of the 01/Fax product we had in
16 1994 -- 1993, actually.

17 Q. And what was in the box?

18 A. In the box --

19 Q. Or I should say what is in the box because it is still there
20 today?

21 A. In the box is our software, the 01/Fax software. Now this
22 is real historic. It has floppies, those three-and-a-half inch
23 floppies that my daughter never seen before. And it has floppy
24 containing the 01/Fax software.

25 Q. Was this product successful, Mr. Cheung?

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1 A. I would say it is very successful, although it was
2 short-lived and we didn't sell very many copies because it was a
3 very important milestone to the next product, the Communicate!
4 product where we sold more than 5 million copies across the
5 United States.

6 Q. Who wrote the 01/Fax software?

7 A. It was majority written by me, myself, and some other
8 software engineer that I hired at that time.

9 Q. Well, now, tell the jury how Communicate! developed out of
10 01/Fax.

11 A. Communicate! was a combination of fax -- obviously fax is
12 one part of it. So, we using this fundamental code combining
13 with other additional code we did so that we integrate fax,
14 e-mail, voicemail, text-to-speech, paging, all into one piece.
15 So that you can use your computer to receive your voicemail and
16 self-detect whether it is a voice, a person calling, or it is a
17 fax machine calling. And it will switch accordingly, so you
18 don't need two phone lines for different things.

19 And so you don't need to buy different -- different of those
20 software. And one, like we call all-in-one communication
21 central unit.

22 MR. SHUNK: Your Honor, with regard to Plaintiff's
23 Exhibit 4, we have a photograph of the box. And I would move
24 the photograph into evidence in order to not have the bulky box
25 itself be in evidence.

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1 MR. STONER: I don't see the relevance, Your Honor.

2 But if they want to put it in, no objection.

3 THE COURT: All right. It is admitted.

4 BY MR. SHUNK: (Continuing)

5 Q. I would ask, then, that you have the box of physical

6 exhibits. Could you find physical Exhibit 6 and 12.

7 A. Can I put this box down?

8 Q. Yes, please.

9 A. Yes, 6 and 12, right.

10 Q. Hold those up, Mr. Cheung, so the jury can see them.

11 A. This is Exhibit 6, and this is Exhibit 12.

12 Q. What are these?

13 A. These are two different versions of the -- the Communicate!
14 product I just mentioned. The all-in-one communication product,
15 we sold more than 5 million copies around -- across United
16 States.

17 And one earlier version, the blue box, and the later
18 version, the green box -- the purple box that we had Internet
19 phone built in for this later version.

20 Q. Okay. Now, is that something -- what's the technical word
21 for Internet phone? Is there a technical phrase for that?

22 A. Yes. Actually, Internet phone at that time was allowing a
23 person to call another person on the computer over the Internet.

24 And fast-forward 15 years today, we call them VoIP, Voiceover
25 IP, but that was the -- the predecessor name was Internet phone

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1 at that time.

2 Q. You mentioned just a second ago in your answer IP. What is
3 that?

4 A. IP is -- the short answer is Internet protocol, and it is
5 the fundamental language that the Internet talk, like computer
6 talk to each other over the Internet.

7 MR. SHUNK: Your Honor, just as we did with Plaintiff's
8 Exhibit 4, we have photos to introduce into evidence for
9 convenience of 6 and 12. And we would move the admission of
10 Plaintiff's Exhibit 6 and 12 at this time.

11 MR. STONER: Your Honor, again, this has nothing to do
12 with these patents, so it is irrelevant. But if they want to
13 put it in, no objection.

14 THE COURT: Admitted.

15 BY MR. SHUNK: (Continuing)

16 Q. Now, was -- can you -- you told us how many copies you sold
17 of Communicate!

18 Was it financially successful to your company, the selling
19 of Communicate!?

20 A. Yes, it was financially successful.

21 Q. And what was your distribution method for Communicate!?

22 A. We distribute through mainly two channels. Our first
23 channel was the -- the retail chain store like CompUSA, Office
24 Depot, OfficeMax, Circuit City, et cetera, et cetera.

25 And then the other channel is what we call the modem

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1 bundling channel. My daughter never see, again, a modem. But a
2 modem at that time was a piece of equipment that we use in the
3 computer to talk to another computer. And those -- like the
4 word -- name modem at that time, for example, Hayes modem, who
5 invent modem, they bundle our software, the Communicate!
6 software with their product.

7 So, if you happened so long ago that you have used a Hayes
8 modem before, chances are you have used our product because it
9 was bundled in those modems.

10 Q. Mr. Cheung, I would like you to turn back now to Plaintiff's
11 Exhibit 1 in your book. And if you haven't already, you could
12 put 6 and 12 back in the box.

13 By the way, Mr. Cheung, is there a copy of Plaintiff's
14 Exhibit 1 in the box as well? I wonder if you might hold that
15 copy up for the jury.

16 A. Yes.

17 Q. Mr. Cheung, I would like to direct your attention now to
18 Plaintiff's Exhibit 1, the '479 patent.

19 First of all, would you just tell the jury what the title of
20 the patent is.

21 A. The title of the patent is called System Computer Product
22 and Method for Providing a Private Communication Portal.

23 Q. What does that phrase "private communication portal" mean?

24 A. Maybe the best way to explain that is like the word
25 "portal." Portal is a technical word, simply in plain English

1 it means something that facilitates communication from one
2 computer to another. Or you can fast-forward to today, we call
3 it remote access.

4 Q. Why didn't you call it remote access in the title?

5 A. It is -- the technical term "portal" is what I used, but it
6 means the same thing in the software programmer's world.

7 Q. We've heard a lot both in opening -- in the two openings and
8 now from you about remote access. Would you give the jury an
9 example of remote access so we can get to understand this a
10 little better.

11 A. Absolutely. Remote access is -- let me give you an example.
12 Like say you have a computer in your office where you keep all
13 the important documents. And you are traveling now with your
14 laptop with you, or you are in a hotel business center using one
15 of their computer, and you need to access to one of these
16 important document.

17 You can then log in back into a computer and as if you are
18 using the computer back at the office, although it may be
19 thousands miles away. After using it, you close it, nothing
20 left in that remote computer, say the business hotel, business
21 center, and it becomes very safe.

22 In this way, imagine that your document has never left your
23 office computer. It always stay there even though you can
24 access to it.

25 Q. Let's think back to the late '90s before your invention,

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1 Mr. Cheung.

2 Were there products or services out there before you that
3 permitted some kind of remote access?

4 A. Yeah, absolutely. Remote access wasn't new. Remote access
5 has been there long time before the invention. Only that all
6 those older software, they all share more or less the same
7 problem, making them, I would say, practically unusable in the
8 age of the Internet.

9 Q. Well, let's take a step back. I want to come back to those
10 problems, but let me ask you first how you got involved in
11 designing remote access software.

12 A. When I was -- I would say early 1997 we were exhibiting in
13 the largest computer trade show in Hanover -- well, actually
14 largest computer trade show in Europe in Hanover, Germany. We
15 were exhibiting Communicate!, at that time we were actually
16 selling Communicate! at that time. And a large cell phone
17 manufacturer from Sweden called Ericsson approach my show booth
18 and discussing they want to put some kind of the Communicate!
19 features into a cell phone, something related to that.

20 And that triggers me starting to think about all these
21 problems we might have when you are remotely accessing a
22 computer remotely.

23 Q. You know, I forgot to ask you, Mr. Cheung, you have written
24 computer code. I think you testified about this 01/Fax product.

25 Who wrote the accounting software for your company?

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1 A. Oh, I did, although I am not an accountant.

2 Q. Okay. Going back to the problems that you just mentioned in
3 your testimony. As you thought about this idea, what were the
4 problems that you realized that were out there?

5 A. Mainly the problem of accessing a computer, especially in
6 the 1997 time frame, was in mainly three areas. First of all,
7 the firewall, and then the dynamic IP addresses, and then the
8 routers.

9 Q. Let's take those things and learn something about them now
10 through your testimony, if we can.

11 What was the first one you mentioned? Firewall, right, I
12 think?

13 A. Yes, firewall.

14 Q. Tell the jury what a firewall is.

15 A. Firewall is basically something that prevent unauthorized
16 access to a computer. Its main purpose was to protect a
17 computer against hackers around the world.

18 You can imagine that it is being like you have your home,
19 you have your main door, your front door. A firewall is kind of
20 like the key, the lock in your front door. So, preventing
21 unauthorized access to your home.

22 So, it does the same thing for the computer.

23 Q. Firewall sounds like a big door. Is it a physical thing?

24 A. Firewall can be a physical box, or it can be a software
25 configured in the computer, or it can be anything. But

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1 basically it is something that would just prevent unauthorized
2 access to a PC accessing from outside.

3 Q. Why were firewalls a problem for remote access?

4 A. Firewall is a great equipment for hacker prevention, but
5 because of the feature that it has, it is also creating a very
6 big problem for remote access.

7 Imagine that you are traveling into somewhere, and in the
8 hotel business center you are trying to use one of the computers
9 to access your home computer or your office computer. And the
10 firewall there, obviously, doesn't know the computer in the
11 hotel business center because it could be used by anyone. All
12 right.

13 So, likely that your firewall would reject that connection,
14 and that is making remote access just impossible with this.

15 Q. You mentioned, and I hate to even start down this road,
16 dynamic IP addresses. What is a dynamic IP address?

17 A. That is a good question. Actually, maybe I should start
18 explaining about what is an address first in computer.

19 Q. Okay.

20 A. Similarly, I use the same analogy, like your home. You have
21 a physical address at your home, so that your friend can come
22 visit you and the mail can deliver to you.

23 So, similarly, a computer talks to each other, especially
24 over the Internet, using an address, a computer address. And on
25 the Internet world, this is called the IP. As I explained

1 earlier, this is called Internet protocol address.

2 Now, why is it a problem? Is because Internet address are
3 limited to a certain number of address, but there are many more
4 computers, more than the number of addresses available who wants
5 to connect to the Internet. Therefore, the Internet providers
6 who connects computer to the Internet are only assigning IP
7 address to a computer when it needs it.

8 When the computer disconnect from the Internet, what happens
9 is that the same address will go back to the pool, and then the
10 Internet service provider would reassign that same address to
11 another user when another one wants to connect to the Internet.

12 So, that's basically how they call it dynamic, because the
13 computer owner does not have control on the -- what IP address
14 it has at what time.

15 Q. Well, again, why would that, why did you see that as a
16 problem for remote access?

17 A. That would be a big problem because if you imagine, again
18 using my analogy, your home has an address, but if the Post
19 Office change your address like every month or so, chances are
20 you will miss a lot of mail.

21 So, it is the same thing that if the Internet service
22 provider change your IP address, which they do, they just change
23 it without letting you know, and you won't know which IP address
24 you want to use when you are on the road trying to access your
25 computer at that time.

1 So, it is similar problem as a mail address.

2 Q. Mr. Cheung, in your testimony I have heard you refer to
3 connecting to a business computer sometimes, and sometimes you
4 say connecting to a home computer. Is there any difference in
5 terms of remote access in terms of the problems to connect to
6 one or the other?

7 A. Fundamentally there is no difference because your home
8 computer or your office computer is a computer on the Internet.
9 So, whether you have a home computer that you want to remotely
10 access, or you have an office computer that you want to remotely
11 access, or they access each other, it doesn't matter, it is a
12 remote access.

13 Q. I have also heard you refer both to using a laptop to do the
14 accessing and then you also, I think, talked about computers at
15 a hotel. Is there any difference in the problem of remote
16 access in terms of which one of those?

17 A. No, there is no difference. When you are traveling with a
18 laptop or when you are just picking a computer from a friend's
19 house, put it this way, or borrow a computer at the business
20 center of the hotel, it is the same thing, you are using a
21 computer on the Internet somewhere to access your office
22 computer or your home computer at another location.

23 Q. Now, are you familiar with a technical word in the computer
24 software business "host," the word "host"?

25 A. Yes, I am.

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1 Q. What is a host?

2 A. Well, a host computer is really something that like you are
3 accessing. Technically you can call it a host, or you can call
4 your office computer, or you can call it is your home computer,
5 as long as something that you are accessing, that's in general
6 technically we call a host.

7 Q. And have you heard the term "client" used in the context of
8 software?

9 A. Yes. Client is basically the one that accessing the host.
10 For example, using what we just discussing, the laptop computer
11 or the hotel business center computer, that is what technically
12 called the client, is the one that is accessing the host
13 computer.

14 Q. The third thing you mentioned is router. What's a router?

15 A. A router in simple term is a piece of equipment that allows
16 multiple computers to share one single Internet connection
17 point.

18 Q. Can you give the jury a common example of a router that they
19 might be familiar with?

20 A. Yes. In today's point of view, I think the Wi-Fi router
21 that many people at home that you can share that Internet
22 connection so that my son, my daughter can connect to the
23 Internet at the same time, is a very typical example of a
24 router.

25 Q. Well, why did you think routers would be a problem back in

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1 1997 for remote access?

2 A. First of all, in around the 1997 time frame and later on,
3 there were more and more people using routers. And as I said, a
4 router allow you to share one single Internet connection point.

5 That's exactly where the problem come from because it is one
6 single point of connection, but then behind the router you have
7 so many computers. From remotely, how do you know what is the
8 address of the computer that you want to contact? There is no
9 address that you can do it.

10 Router works because from one computer connecting through
11 that router when you are sending out a request to a destination,
12 like when you are doing a Google, you are accessing the Google
13 server. All right. When Google server replies back to you, the
14 router sees and knows which computer, like your son's computer
15 or your daughter's computer, which computer send out that
16 request, it know where to deliver back the reply to.

17 All right. But then if it is not initiated from inside, you
18 are from outside, there is no mechanism that you can reach the
19 inside computer, there is no particular address.

20 Q. Well, so -- but don't the computers that are in the -- in
21 the home, don't they have to have addresses, too, in order to
22 talk with each other in the home?

23 A. Yeah, they have an internal address. But the external
24 address, there is only one external address, and only the router
25 know which internal address it is.

1 And people from outside, when you are trying to access the
2 computer, you don't know what internal address the router knows,
3 like your son's computer or your daughter's computer, behind
4 that router.

5 Q. Okay. So, you identified these three problems. Did you in
6 1997 look around at what other remote access products or
7 services there might be to see if they solved these problems?

8 A. Yes, I did look around very thoroughly.

9 Q. What did you find out?

10 A. Hopefully I wanted to find something that already existed so
11 that I could license them and integrate them with my
12 Communicate! product at that time to provide remote access to my
13 Communicate! product.

14 Q. Let me stop you right there. So, were you -- as you were
15 thinking about this, were you looking to invent something and
16 file a patent at that time when you started thinking about this?

17 A. No, I wasn't.

18 Q. I see. So, how did this relate to what you were doing at
19 the Hanover show?

20 A. Yeah, at the Hanover show, as I mentioned, the Ericsson
21 visit to my booth triggered me starting to think about these
22 remote access problem. And from that point I started to think,
23 well, with routers, dynamic IP addresses, firewall, you just
24 cannot do remote access effectively and securely.

25 And then as I said, now, I started to look around, hopefully

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1 that I can find something already existed so that very quickly I
2 could integrate them, license them to my Communicate! product to
3 provide remote access feature.

4 Q. I see. So, how was remote access going to improve the
5 Communicate! product, what was that going to add to it?

6 A. Imagine that Communicate!, if you remember, it was capable,
7 it was an integration of fax, voice mail, e-mail, paging,
8 text-to-speech into one central inbox. Right. So you have all
9 these things all coming to your computer from all different
10 sources.

11 The very next question, very next logical question is, how
12 do you remotely access all these messages in your office or your
13 home computer? And that's how it triggered into the remote
14 access area related to the Communicate! product.

15 So, with remote access capability built into Communicate!,
16 we would allow that very important feature to work, especially
17 at the age of the Internet. Remember in 1997, the Internet is
18 beginning to become very strong.

19 Q. Right. Okay. Now, so you looked around at the other
20 possible solutions out there. What did you find lacking in
21 those solutions? What were they missing?

22 A. Well, unfortunately, I couldn't find anything during those
23 thorough search.

24 Q. Well, are you saying that there was nothing that would
25 remotely access through a firewall?

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1 A. Not really. What I said was there was nothing that could do
2 it in the way that very efficiently and safely solving all those
3 three problems I just mentioned; the firewall, the dynamic IP
4 addresses, and routers. I couldn't find any solution that I --
5 that could do this job.

6 The most you can do was like, for example, you poke a hole
7 in your firewall. Poke a hole technically means opening a port
8 on the firewall to allow someone to come in. But as you can
9 tell from this description, it is very technical way to do that,
10 and not many laypeople know how to do this.

11 Even though they know how to do that, they probably are
12 unwilling to do it because poking a hole means you are
13 increasing your vulnerability to hackers around the world.
14 Nobody want to do that. So, they were not very good solutions.

15 Q. Okay. Well, what did you do then?

16 A. As a result, I decided that I had to roll up my sleeve and
17 create the remote access solution by myself.

18 And eventually I came up with the idea about that -- earlier
19 we called it locator server or gateway server technology.

20 Q. Well, can you give the jury just a basic explanation of what
21 the insight you had was? How were you going to solve these
22 problems?

23 A. In a very quick description of it is like we have the
24 gateway or the locator server as the middleman. Not part of
25 your office computer and not part of the remote, like the laptop

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1 computer or the hotel business center computer. And the
2 middleman would create a communication channel and session
3 between your office computer and your remote computer using the
4 information initiated from a ping, which we explained a little
5 earlier, the short message from the office computer to the
6 locator server.

7 Q. Well, when you say we explained a little earlier, that was
8 me talking, and I don't know anything about this stuff, so I
9 want to hear it from you. What is a -- first of all, ping is
10 p-i-n-g, is that right?

11 A. Yes, it is p-i-n-g.

12 Q. Okay. So, tell the jury what a -- first of all, let me ask
13 you this. Is this we word "ping" used in the computer industry?
14 Is that a technical term?

15 A. Yeah, to the world of computer programmers, they all know
16 what a ping is. Like, ping is kind of like -- in English, it is
17 like, hi, you know, here I am. That's a ping, in computer
18 world.

19 Q. How would one computer send a ping to another computer?

20 A. You just initiate a very short message, or we call it
21 packet, you know, in the computer world, a very short packet to
22 the destination, this is what I called the, hi, here I am, I am
23 alive. Yeah.

24 Q. So, in the best layman's terms that you can, tell the jury
25 how you envisioned that your -- the middleman, the server would

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1 work in your invention.

2 A. In an easy description, like the office computer you have
3 that you are remotely accessing, or you call it host, right,
4 that office computer would generate those pings to the locator
5 server, to the gateway server, in a continuous or we called it
6 regular basis about its location on the Internet.

7 And then this continued for could be days, months, or
8 whatever. So, at the time when you are traveling and you want
9 to remotely access your laptop computer or your -- the business
10 center at the hotel computer, is giving, contacting the locator
11 server and giving a request for communication saying, hey, I
12 want to communicate, I want to talk to this office computer.

13 Then the locator server at that time, because it has all
14 those pings, you know, continuously generated from the office
15 computer, would use this information to find the location, the
16 current then location of your office computer. And then it
17 would join them together by creating a channel and a session for
18 the personal computer and remote computer, like your laptop.

19 Q. Mr. Cheung, when do you estimate that you had this big
20 insight?

21 A. I would say it is no later than September of 1997.

22 Q. Well, have you looked through your records to try to put a
23 date on that event?

24 A. Yes, I did.

25 Q. What records did you look through?

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1 A. The record I looked through would be the invoices that I
2 generated over the years to my company.

3 Q. Why would you be generating invoices to your company if
4 you're the president?

5 A. That's exactly because of that reason, my main job is the
6 CEO of 01, not an engineer. So, it happened that my background
7 is a software engineer. So, I am using my late night, holiday,
8 vacation time, and all my spare time to do what I call a
9 sideline for the company as an engineer.

10 So, as a sideline I am building the company as a -- using
11 the invoice detailing or describing about what I did during the
12 building period.

13 Q. Take a look, Mr. Cheung, in the book of exhibits at
14 Plaintiff's Exhibit 7, please.

15 A. Yes, I am there.

16 Q. What is Plaintiff's Exhibit 7?

17 A. Those are the invoices that I generated, given to the
18 company during the years.

19 Q. Do any of these invoices reflect reference to the invention
20 we have been talking about?

21 A. Let me just quickly look through.

22 Yes, the reference number, 47889, it has an invoice dated
23 September 1997. Yes, this invoice describe about the invention
24 I had in 1997.

25 MR. SHUNK: Your Honor, plaintiff moves the admission

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1 of Plaintiff's Exhibit 7.

2 MR. STONER: No objection.

3 THE COURT: They are admitted.

4 BY MR. SHUNK: (Continuing)

5 Q. Mr. Cheung, I would like to, I would like to walk through
6 some of the language in this particular invoice to help the jury
7 understand what it is you were looking at when you decided that
8 the invention was no later than September of 1997. First of
9 all, could you read for the jury your paragraph numbered 1.

10 A. Yes. Paragraph number 1 says: Continue research on
11 existing Internet phone protocol and connection technologies.
12 (a) is: Investigation continued on Microsoft ILS server,
13 formerly called ULS.

14 Q. Okay, let me stop you there. So, why were you -- what was
15 the work you were doing investigating the Microsoft ILS server
16 about in relation to your invention?

17 A. As I mentioned earlier, we were looking around to see if
18 there was any existing solution or existing technology that we
19 could license to integrate with the Communicate! product.

20 So, this is part of those investigation that I have done.

21 Q. So, as you were looking around, did this Microsoft ILS
22 server, did it allow remote access?

23 A. It allows remote access.

24 Q. Let's read now the next sentence after that.

25 A. Yes, it says: It was proven that ILS server simply stores

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1 the IP address of the user and password -- and passed it to the
2 requesting party.

3 Q. Keep going.

4 A. It would not make the connection and, as well, would not
5 work if the IP address is behind a router, proxy, or a closed
6 firewall.

7 Q. Okay, let me ask you about that now. Were you describing
8 some of the deficiencies of the Microsoft product?

9 A. Yes, it was.

10 Q. When you say it wouldn't work behind a closed firewall --
11 closed, c-l-o-s-e-d firewall, what did that mean?

12 A. It means, usually a firewall is closed because you don't
13 want your firewall to open, like a lock. So, when your firewall
14 is closed, as I describe firewall technology before, you do not
15 allow people to get through the firewall to the PC. So, when it
16 is closed, it would just reject everything coming from outside.

17 Q. You also just read that it would not work if the IP address
18 is behind a router. Would you explain that to the jury.

19 A. Yes, this is exactly what I said before about how router
20 works. You have an IP address behind a router. Means that IP
21 address is unknown to the outside world, it is unaddressable to
22 the outside world.

23 If anyone wanted to contact you, because there is a router,
24 there is an internal IP address, you cannot talk to the computer
25 at all. There is just no vehicle for you to talk to this

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1 computer if your router is closed or your firewall is closed.

2 Q. By the way, I think I forgot to ask you, what is the
3 specific date of the invoice that we're talking about?

4 A. We are talking about September of 1997.

5 Q. What's the next sentence in your notes of the work you were
6 doing?

7 A. The next sentence says: It would not make the connection
8 and, as well, would not work if the IP address is behind a
9 router, proxy, or closed firewall.

10 And it says then: Other ILS service provider was studied,
11 [the four/11.com] with the same result.

12 Q. So, what was four/11.com?

13 A. Four/11.com is a server operating by the company four11 and
14 providing an IOS service for the public at that time.

15 Q. Going on to subparagraph (c) -- and this is the last
16 paragraph we are going to look at -- would you read the first
17 sentence of those notes.

18 A. 1(c) says: With the failing results, a conclusion --

19 Q. Excuse me. What was that word?

20 A. With the failing results.

21 Q. Failing result. Okay.

22 A. Yeah, failing. With the failing results, a conclusion that
23 a new technological concept might be the solution. This concept
24 involves having the host initiate communication and continue
25 communicating with the central server in order for the central

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1 server to create communication sessions between the host and the
2 client. In other words, it does not require the central server
3 to initiate communication with the host.

4 Q. What was that a description of, what you just read?

5 A. That description basically describe what I said a little
6 earlier about the technology, whereby it is not the -- the
7 outside world communicating with the -- your computer. It was
8 that your office computer initiate the outbound communication
9 with the server using this short ping information continuously
10 on a regular basis about your then current location.

11 And then at the time when you want to remotely connect,
12 remotely access this office computer, your laptop computer, or
13 the computer at the hotel business center would contact the
14 locator server and say, hi, I want to communicate with this
15 office computer.

16 Then the office computer know where is the office computer
17 and they can join them together, forming a communication session
18 and channel.

19 Q. Okay. And maybe I wasn't clear with my question. Were you
20 describing some other product that you had seen there? What
21 were you describing?

22 A. I was -- here I was describing our -- the concept we had at
23 that time.

24 Q. The invention?

25 A. The invention we had at that time that solved those problems

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1 that -- that after all these studied, thorough studying to the
2 market, nobody had any existing solution or technology at that
3 time.

4 Q. So, starting in September, did you begin working on this
5 server technology that you had developed or come up with?

6 A. Yes, I did.

7 Q. What did you do? What kinds of things did you do to work on
8 the project?

9 A. I would continue -- there are many things I did. I
10 continued to -- to research into, is there any other things that
11 have -- or a later version that could solve this problem.
12 Couldn't find anything.

13 At the same time, I also starting to dig into the prototype
14 of creating something that would -- would be enough so that I
15 can take it to my engineering team and let them continue with
16 the commercial product development.

17 Q. Would you say that you started working full-time on this new
18 invention?

19 A. I cannot, because I have a full-time job as the CEO of 01
20 Communique. So, I can only work on my part-time, my late night,
21 my holiday, vacation to -- to continue this development on my
22 own.

23 Q. Did you miss any birthdays as a result of working on this?

24 A. I am sure I missed some, yeah.

25 Q. Over time, Mr. Cheung, how much money do you estimate that

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1 01 has put into developing and commercializing that invention?

2 A. Over \$25 million.

3 Q. Well, once you had worked out the details of the idea --

4 and, by the way -- well, no. Let me ask you that.

5 Once you had worked out the details of your idea, did you

6 put down the details down in writing?

7 A. Yes, I did.

8 Q. Take a look, if you would, at Plaintiff's Exhibit 8.

9 Do you recognize Plaintiff's Exhibit 8?

10 A. Yes, I do.

11 Q. What is it?

12 A. This is one of those documents -- I sometimes call them

13 white paper, that I put down the -- some details of the

14 invention into paper.

15 Q. What's the date of Plaintiff's Exhibit 8?

16 A. August 18th of 1999.

17 Q. Were you able to find any earlier documents that set out the

18 details of your invention than this?

19 A. I cannot find anything earlier than -- than that or the

20 invoice. The September invoice 1997 was the earliest I can -- I

21 can find.

22 MR. SHUNK: Your Honor, plaintiff moves the admission

23 of Plaintiff's Exhibit 8.

24 MR. STONER: No objection.

25 THE COURT: It is admitted.

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1 BY MR. SHUNK: (Continuing)

2 Q. Explain to the jury why from September of 1997 to August of
3 1999 there is no other paper that breaks down the details of
4 your invention.

5 A. It actually took me that -- that kind of a time to find time
6 to starting writing down the concept. Mainly the reason was
7 that I had decided around mid-1999 that we would pursue it for a
8 patent application process.

9 So, it is important that I was starting to write down and
10 putting some different pieces of the concept together in one
11 single paper.

12 Q. I would like you to take a look in particular at one little
13 point in Plaintiff's Exhibit 8. On the first page, Mr. Cheung,
14 do you see the paragraph that begins: This technology involves
15 three technical components?

16 A. Yes, I saw that.

17 Q. Would you read what those three technical components are to
18 the jury.

19 A. The three components are as follows. Number one, Internet
20 client [a remote computer]; number two, a gateway server
21 [gateway]; and, number three, PC [a host computer].

22 Q. PC stands for what in this phrase?

23 A. In this phrase PC is the normal short form that people use
24 for a personal computer. It's just another name of personal
25 computer.

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1 Q. Take a look at Exhibits 9 and 10, if you would.

2 A. Yes, I have it here.

3 Q. What are Exhibits 9 and 10?

4 A. Exhibits 9 and 10 are some revision of that August 18, 1999
5 paper with some refinement and modification.

6 Q. Do these also describe aspects of your invention?

7 A. Yes.

8 MR. SHUNK: Your Honor, I move the admission of
9 Plaintiff's Exhibits 9 and 10.

10 MR. STONER: No objection.

11 THE COURT: They're admitted.

12 BY MR. SHUNK: (Continuing)

13 Q. Now, between the time that you first had the idea for the --
14 for the server that you have described and the ping and so
15 forth, and the time that you filed your patent application, were
16 there any periods where you just gave up working on the project
17 or, you know, put it on the back burner, something like that?

18 A. No, I continue work on that.

19 Q. When did you finally have a version that you were satisfied
20 with commercially?

21 A. I would say is September of 2000.

22 Q. What did you decide to call the new product?

23 A. At that time finally we called the computer -- we called the
24 product I'm InTouch, I apostrophe m, InTouch.

25 Q. Is the InTouch squeezed together? It is all one word?

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1 A. Yes, it's in one word.

2 Q. Where did the name come from?

3 A. We ran a name contest within 01, and someone won that name
4 contest.

5 Q. Do you remember who won?

6 A. No. Not me. I remember that it's not me.

7 Q. Do you remember what they won, even more importantly?

8 A. I don't even remember.

9 Q. Okay. Well, take a look at Plaintiff's Exhibits 13 and 14.
10 And that would -- those would be both of them in the box, I
11 believe.

12 A. This is 13.

13 Q. Yeah, hold up 13 first.

14 A. Yeah.

15 Q. Yeah. What is 13?

16 A. 13 was a retail box of the -- of the I'm InTouch product.
17 We had it available in retail stores.

18 Q. Well, why -- why were you -- why were you selling it in a
19 box like that?

20 A. I think it's good to mention about that because, remember,
21 this was introduced in 2000, the year 2000. Today, you know
22 13 years later, we are -- we're very used to downloading
23 software. But 13 years ago, it was just a -- a kind of early
24 adapter doing that. So, a lot of people still buying software
25 in a box over the shelf.

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1 So, we offer it as an option like this.

2 Q. Okay. Well, was it -- what was the price for that box, do
3 you remember?

4 A. It contained a first year subscription, first year usage of
5 \$99, \$99. Like \$100 to be like a round number.

6 Q. So, about \$99 and --

7 A. \$99 a year, right.

8 Q. Okay. So when people bought the box were they buying the
9 thing in the box or were they buying the service?

10 A. They were buying the service. They are buying a one-year
11 subscription of the service.

12 Q. Okay. Now, at that time when you brought out I'm InTouch,
13 was it possible for someone to simply download the software
14 without buying the box?

15 A. Yes, they can.

16 Q. Did they have to pay for the software that they downloaded?

17 A. They do not need to pay for the software they download.

18 Q. What did they have to pay for?

19 A. They pay for the either monthly subscription or annual
20 subscription for using the system, using the service.

21 Q. Let me ask you now about the service itself. What does --
22 what does the service consist of from your company's standpoint?

23 In other words, what physical assets does your company have
24 that become part of this service?

25 A. What we have is a server. We maintain that locator server,

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1 which is totally not -- not within the personal computer or the
2 remote computer. And it would -- it would connect the personal
3 computer and the remote computers together.

4 So, our company managed that locator server, and we -- we
5 allow end users to sign up for using this service either by a
6 monthly subscription or an annual subscription of what I just
7 described about.

8 Q. I see. So, your company had the server. Did your company
9 sell the remote or the host computer?

10 A. We do not sell the host computer.

11 Q. Okay. So, let me get this straight now. Someone who wants
12 to use I'm InTouch would either buy the box or they would
13 download it, I guess. On what computer would they put that
14 software?

15 A. Well, they would put that software onto the personal
16 computer, like -- or you can call it the host. It is actually
17 the computer that you would be remotely accessing, such as the
18 office computer or your home computer.

19 Q. Now, what about -- so that's the -- that's the software
20 that's on the host computer. Now, let's say that the user
21 moves, you know, or is traveling and they have their laptop with
22 them.

23 Would they also have to download some software onto the
24 laptop?

25 A. They do not need to do anything. On the laptop computer --

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1 or I have always referred to the computer at the -- computer at
2 the business center of the hotel, all they need to have is a
3 browser, is an Internet browser there to begin with.

4 Q. What is Exhibit 14? Would you hold that up, please.

5 A. Yeah, Exhibit 14 was a brochure that we had for the I'm
6 InTouch service.

7 Q. Okay. And, roughly, what's the vintage, the date on that
8 brochure?

9 A. I would say it's around 2000 when we -- when we first
10 launched the product at the -- either the conference that --
11 that we had in Toronto, September of 2000, or the November
12 COMDEX trade show in Las Vegas.

13 MR. SHUNK: Your Honor, I move the admission of
14 Plaintiff's Exhibits 13 and 14. And, once again, for 13 we have
15 a photo to go into the record in place of the actual box.

16 MR. STONER: No objection.

17 THE COURT: They are admitted.

18 BY MR. SHUNK: (Continuing)

19 Q. You can put those two things back in the box, Mr. Cheung, if
20 you would, please.

21 Now, I would like to ask you some questions about the
22 pricing for your service. First of all, in the early days,
23 right after you brought it out in 2000, did someone who wanted
24 to try your product back then have to immediately pay money to
25 do that?

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1 A. No, they don't need to. We have a 30 days free trial. And
2 at the end of the 30 days, you -- the user can either subscribe
3 to the service by, as I mentioned before, monthly subscription
4 or annual subscription. Or if they decide to subscribe any time
5 during the 30-day trial period, they can subscribe to it any
6 time.

7 Q. Was there any difference between the -- the service that was
8 during the trial period versus the service that a user got if
9 they paid the subscription price?

10 A. No, there is no difference. Work exactly the same.

11 Q. Now, the software that gets downloaded, that you have shown
12 us in the box, does that software sit on the locator server?

13 A. No, the software sits -- as I said before, it would sit in
14 the personal computer or the host computer, you know, the one
15 that you are remotely accessing.

16 Q. Who wrote the code for the software that lives on the server
17 computer, the locator?

18 A. On the locator, those codes were developed by 01, my
19 company.

20 Q. Okay. Let's walk through, if we can, Mr. Cheung, what
21 happens when a customer actually uses the I'm InTouch service.

22 Did you personally prepare a short video showing the use of
23 the product?

24 A. Yes, I did.

25 Q. And what did you do to prepare that video sample?

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1 A. I was using a small program to capture the screen happening
2 on the remote computer. Like you mentioned your laptop
3 computer, I always use the hotel business center computer where
4 you are accessing from.

5 So, I was taking a video recording of the screen happening
6 on that remote computer.

7 Q. Now, what -- so, you are the person who actually did the
8 video recording?

9 A. Yes.

10 Q. Is that correct?

11 A. Right.

12 Q. And you are also the person who actually did the remote
13 accessing?

14 A. Yes.

15 Q. Now, once you did the video recording, did you take a look
16 at the video that you had recorded to determine whether you
17 believed it was true and accurate about showing how your product
18 works?

19 A. Yes.

20 Q. And was it?

21 A. It was accurate.

22 Q. Okay. Now, is that video recording Plaintiff's Exhibit 19?
23 And I know that --

24 A. Yeah. This --

25 Q. Right. There is nothing in the book, but you remember

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1 giving me that to put -- so that I could put a plaintiff's
2 sticker on it?

3 A. Yes. Yes.

4 MR. SHUNK: Your Honor, with the Court's permission, we
5 would like to show -- this is about a two-minute video.

6 THE COURT: All right.

7 MR. SHUNK: And it shows --

8 BY MR. SHUNK: (Continuing)

9 Q. Before we start it, though, Mr. Cheung, I would like you to,
10 as they say in the movies, set up the clip for us.

11 What had you done before the clip begins so that the jury
12 understands where they are jumping in.

13 A. Right. I would give some background about the preview
14 maybe.

15 Q. Okay.

16 A. Because I have to access a computer. So, I had already
17 downloaded the software and installed that on the personal
18 computer where I am accessing. So, that was what I did before
19 this video, making the personal computer remotely accessible.

20 Q. So, you had downloaded that on the computer. Where
21 physically was that computer when you did the video?

22 A. That physical computer was remotely, was actually in
23 Toronto, Canada when I did that video here in my Arlington,
24 Virginia office.

25 Q. And I was about to ask you, where were you when you were

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1 doing -- when you were trying to remotely access the Toronto
2 computer?

3 A. I was at my Arlington, Virginia office.

4 Q. Okay. Now, I know the jury -- because I have seen the video
5 too. I know the jury is going to see you open a book on the
6 video.

7 Where is the -- where was the electronic file for that book
8 located as you were opening it?

9 A. That book -- we call it a pdf file -- was physically located
10 in the personal computer about 1,000 miles away in Toronto.

11 Q. Okay. And so, now I would ask our technical assistant to
12 run the video, if you would.

13 Explain what is going on.

14 A. Yes. Here it is the remote computer where you are, again,
15 using the browser. You just open up an Internet browser and
16 visit the locator server called I'mInTouch.com.

17 And here it is asking you to log in, of course, to the
18 account. So, I would type the login ID of my account. And, of
19 course, you need a password to authentic to log in.

20 After that, I would then pick and choose a computer I want
21 to remotely access, which is the one, as I mentioned before, in
22 Toronto that I am remotely accessing.

23 So, once I click, what it would do is it would create --
24 like what I am doing here, it would create a communication
25 channel and session.

1 And after that, it would, again, obviously for securities
2 reason, it would prompt you to enter a secondary password.

3 And once that secondary password is successfully
4 authenticated, it would present the screen of the computer in
5 Toronto.

6 So that you would see in a few seconds here that the
7 computer from 1,000 miles away is actually appearing in this
8 remote computer and you are using the computer as if you were
9 physically there.

10 For example --

11 Q. So, that's the desktop of the Toronto computer?

12 A. Of the Toronto computer. You can open a pdf, like a book,
13 on that computer and then view it, scroll, doing editing,
14 anything you like, as if you are sitting in that 1,000 miles
15 away computer in Toronto.

16 When you are done, you simply -- you can close it and
17 disconnect from it, as I mentioned before.

18 Now, nothing has been moved to this remote computer. So, it
19 is very safe this way for remote access. Because I bet you
20 reading a lot of news, you know, in the paper, that a lot of
21 computers with confidential information were inadvertently lost
22 during travel.

23 So, this type of remote access would never have this problem
24 and is working through firewall, router, dynamic IP addresses.

25 Q. Okay. Well now, for example, if I wanted to look at a book

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1 that I might store online, how is that different, you know,
2 looking at a book that I might have using G drive or Dropbox or
3 something like that?

4 A. Well, that is a different thing because now with the remote
5 access, you are -- you are actually accessing your computer at
6 your office or your home. Right. You don't need to move it
7 onto someone else's server so that you can look at another
8 server.

9 So, think of it as a securities point of view. It's more
10 secure, because if -- say using your example of Dropbox, you
11 have to move a file that you want to access when you are
12 traveling into the Dropbox first, and then when you are
13 traveling you are accessing that Dropbox.

14 And that Dropbox is managed by some other location, and
15 people may be able to hack in and -- that's a different thing.
16 You know, I'm not getting into another discussion.

17 But to answer your question clearly, it is -- you are
18 accessing another place, you know, rather than your own
19 computer.

20 Q. Is your method of accessing remotely more or less secure
21 than some of these other methods we have heard about?

22 A. Do you mean these methods like a third-party server and
23 things like that?

24 Q. Yes.

25 A. Yeah, in my opinion it is more secure because you are

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1 accessing your own computer.

2 Q. Now, Mr. Cheung, when did you record the video that we just
3 saw?

4 A. Very recently, to prepare for this trial.

5 Q. Has the I'm InTouch service functioned substantially
6 differently from what we saw at any time in its history?

7 A. If your question is about whether it is -- the technology
8 that we use was the same, yeah, we're using the same technology
9 since day one. But, of course, in software development, you --
10 it is a nonstop process, that you always have to refine your
11 product, you know, with different efficiency, additional
12 features, and things like that.

13 Q. Take a look at Plaintiff's Exhibit 20, Mr. Cheung, if you
14 would.

15 A. Yes, I have it here.

16 Q. What is Plaintiff's Exhibit 20?

17 A. This is some -- I will say a snapshot of some important
18 moment of the video I've just shown and demonstrated.

19 MR. SHUNK: Your Honor, in view of the difficulty of
20 watching a video back in the jury room, we would like to move
21 the admission of Plaintiff's Exhibit 20, the snapshots of the
22 video, rather than attempting to move the video itself into
23 evidence at this time.

24 THE COURT: Any objection?

25 MR. STONER: No objection.

1 THE COURT: Admitted. All right, counsel, I think it
2 is time that we recess for lunch, and we will recess now until
3 2:15.

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13 CERTIFICATION

14

15 I certify, this 18th day of March 2013, that the
16 foregoing is a correct transcript from the record of proceedings
17 in the above-entitled matter to the best of my ability.

18

19

20 /s/

21 _____
Norman B. Linnell, RPR, CM, FCRR

22

23 /s/

24 _____
Tracy Westfall, RPR, CMRS, CCR

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